United States Court of Appeals

for the Second Circuit



TRANSCRIPT

Designated Pages from
the Stenographic Transcript
of the Hearing Before the
Administrative Law Judge

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Thirty-First Region

In the Matter of:		
WRITERS GUILD OF AMERICA WEST, INC.,		
Respondent,		
and		Case No. 31-CB-1203-2
ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,		
Charging Party.		
WRITERS GUILD OF AMERICA WEST, INC.,		
Respondent		
and		Case No. 31-CB-1223
AMERICAN BROADCASTING COMPANIES, INC.: COLUMBIA BROADCASTING SYSTEM, INC.: NATIONAL BROADCASTING COMPANY, INC.,		
Charging Party.		

12th Floor, Federal Building
11000 Wilshire Boulevard
Los Angeles, California
Monday, May 21, 1973

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE:

HONORABLE SIDNEY J. BARBAN, Administrative Law Judge

(continued)
APPEARANCES:

PHILLIP R. LE VINE, ESQ.	11000 Wilshire Blvd., Los Angeles, Calif. 90024, appearing on behalf of the General Counsel.
CHARLES K. HACKLER and GERALD GOLDMAN, ESQS.	Levy, VanBourg & Hackler, 3550 Wilshire Blvd., Los Angeles, Calif. 90010, appearing on behalf of the Respondent.
HARRY J. KEATON, ESQ.	Mitchell, Silberberg & Knupp, 1800 Century Park East Los Angeles, Calif. 90067, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.
DAVID G. MILLER, ESQ.	Loeb and Loeb One Wilshire Building, Suite 1600, Wilshire Blvd. at Grand Avenue, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.
RICHARD N. FISHER, ESQ.	O'Melveny & Myers, 611 W. Sixth Street, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; National Broadcasting Company, Inc.

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I don't know.

To say that person was coerced? And we really aren't saying that person is coerced because as Skelly Wright again says, and which was not denied by the other judges who disagreed with him, "The coercion of that individual is not the gravamen of this case.

"It is whether the employer was coerced in his selection of somebody to do something."

So we will not be quite as simple in finding one thing. And it comes out crystal clear.

There is not this roll of dishonor. What he has reference to there is an allegation added to this complaint, mind you, within the last two or three days to give it a little more sex appeal for the newspapers, to put it plainly.

You put out a press release saying that people who break ranks -- members of this guild, every one of them, writers -- if they break ranks and write, in effect, "Scab," that they will be on a roll of dishonor if they are ultimately convicted through processes which we show are extremely democratic and due process in every respect.

They have raised the issue of blacklist. Now, it is our fundamental contention there to the extent that we have a labor organization, and certainly as he indicated himself, many of these persons to the extent that they do no writing and intend to do none -- we are not a public utility.

The loss of their membership in some organization means nothing to them. We don't have the duty to furnish membership to persons who might, in the future, want to write.

But we certainly have the right -- the constitutional right -- to establish with whom we will work. That is not a blacklist.

We don't control the employment. It is a clever semantic twist to say, "Employers may not get together and eliminate employment opportunities silently or by concert."

We are not employers. We can certainly say in any voluntary association union or otherwise, -- in NAACP versus Button as well as the Virginia Bar case, we have a right directly through our members to say, "We will not work with people who have broken ranks in the strike, particularly under the peculiar circumstances that we will show in our case of the diffimlty of preventing scab work from being done."

And I have cautioned, I have requested and I have done everything but stand on my hands to insist that the Government control the proceedings, and that it not be turned over to private counsel.

It isn't just in the interest of shortening the case that we have made these admissions, but it is in the interest of not letting the proceeding be turned into a propaganda

MR. LE VINE: All right.

As our first witness, we would like to call Sheldon Mittleman.

Whereupon,

SHELDON M. MITTLEMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name for the record, please?

A Sheldon M. Mittleman.

Q And your address, please?

A 4123 Terry Brae, Tarzana, California.

Q All right.

Where are you employed?

A I am employed at Universal City by Universal City Studios, Inc., and MCA, Inc.; it is a par corporation.

Q All right.

What is your position?

A An attorney in the law department.

Q And how long have you held this position?

A Approximately two years.

Q And what are your duties?

A My duties are primarily the preparation of personal

Q All right.

Could you tell me what the duties in general are of the producer category? That would be, executive producer, producer or associate producer?

MR. HACKLER: May I ask a preliminary question on voir dire?

JUDGE: Yes.

VOIR DIRE EXAMINATION

Q (By Mr. Hackler) Are these duties so far as your studio is concerned, standardized as to these various job classifications, or do they vary fromproducer to producer, or production to production?

A There will be some slight variation but from my understanding of the motion picture industry, the functions of executive producer, producer and associate producer are virtually identical throughout the industry.

And in the theatrical-motion picture area, again, they are virtually identical regardless of which studio is involved.

MR. HACKLER: Thank you.

JUDGE: Just a moment. Mr. Hackler, have you concluded?

MR. HACKLER: Yes.

JUDGE: Go ahead, Mr. LeVine.

Q (By Mr. LeVine) Could you tell me what the duties of the

producer category generally are? And that would be executive producer, producer and associate producer?

A Yes.

The function of that category of person, is that he has the primary responsibility for the production of television, motion picture, and/or theatrical motion pictures, depending upon their assignment.

It is their responsibility to in effect, commence, develop, a particular project or particular group of pictures from its inception through the preparation of the concept, supervising preparation of the script involved.

And their function and responsibility is also to supervise and be primarily responsible for the actual production of the motion picture, the hiring of personnel for such picture, such as the directors, the actors, the craft union personnel; and supervising all aspects of the post-production of the pictures.

And that is, what happens after principal photography is completed, including the selection of the composer to write the music, the determination of the music that will be actually used and affixed to the picture.

And the determination as to whether or not additional shooting is required to further complete the picture.

And in general, to complete the picture to the form where it is available for exhibition either by television,

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in the case of television picture, over a station or over a network, or available for a showing to the theatrical audience.

Q All right.

Could I ask you to go into a little bit more detail with respect to the sequence of how his duties -- how the duties as a producer originate, and how it progresses through the development of the film?

A Well, first of all, an idea or concept has to be established.

In the case of a television series, it will be a series concept, and in the case of a theatrical motion picture, it will be an idea for a picture, or in the case of a television anthological picture, it will be an idea for a picture.

This can come from a number of different sources, a published novel or a published source.

Or it can be an idea which could be anywhere from a one-page idea to a complete script prepared and submitted by a writer to the studio.

But whatever the concept is, once a studio management determines that it is of sufficient interest to develop it, it is then assigned to a producer to develop.

From that point on, the producer may refine the concept one of various methods: consultation with other executives of the company.

If a particular writer is involved in creating the project, consultation with that writer.

But the next step generally is the employment of a professional writer to write in steps and in stages the project.

The first step will normally and customarily be the preparation of a story or a treatment, indicating the full story, but usually not including dialogue.

This will be written by the writer under the supervision of a producer who may suggest changes, may suggest changes in direction, or approaches of the story.

When this story is completed, the producer along with other members of management, will then determine if the project is still a viable project, one that is interesting to that particular company to produce.

And then the next step will be triggered if that election to go forward is made.

And that step would be the writing of the full script, which would include the dialogue, the flushing out of the characters so that they are real people, rather than sketches.

It might include descriptions of the locale, etcetera.

At this point, then, there should be a completed script, which is again submitted to the management of the company. And a decision is made whether or not to proceed to produce a motion picture based upon that script.

In the case of television, there is one further step that

is usually, but not always involved, and that is, before production of a television picture, in most cases the concurrence of a particular network having a license agreement for its telecast is obtained.

But once the approval to go forward has been obtained, in television, in part with the concurrence of the network and in all cases with the concurrence of the management, then the preparation for physical production will start.

This will involve a selection of the primary actors --

Q Could I interrupt you for one second?

A Yes.

Q Who would do this selection of the --

A The producer category would make the preliminary determination, and narrow down from the particular group under consideration those whom that category, whether it be executive producer, producer or associate producer, feels most appropriate for the particular major roles involved, and make that recommendation to higher management.

In effect, this would be the screening down and the recommendation process.

Another step which may precede it in certain instances and may follow it in other instances, is the selection of the director for the motion picture.

And to this extent, the policy will vary from project to project, whether a director will be brought in first,

and he will then become involved in the selection process of the actors, or the actors will be brought in and then the producer category would then select the director.

The next step would be consultation with the Production Department of the studio to determine with the selected actors and directors, again, is thepicture a viable project; that is, is it economical?

Presumably, the creative decision -- is it a desirable picture to make -- has already been made at this point.

But the further consideration must be, "is it economically feasible?"

And the producer in conjunction with the production department, which arranges for the physical production, will then proceed to prepare for the actual principal photography of a picture.

A number of areas are involved; the type of set to be used, will the picture be produced on location? And who will be the subsidiary actors, what will be the additional staffing of the crews, the assistant directors?

And more important, who are the craft union employees who will be involved with the picture?

These are all selected at this point basically by the producer function, as you call it -- the executive producer, the producer and the associate producer subject to the final approval or veto by management.

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But the function of the producer is to make the selection.

Then the principal photography of the picture will take place.

Again, it will be under the supervision of the producer who is responsible for that production, and responsible to management that the picture is produced as conceived and as contemplated, and as approved by management within the budgetary limitations as also approved by management.

The third primary step in the industry as we conceive it -- the first two being pre-production, and physical production itself -- is the post-production stage; where, again, the producer group is responsible for the final putting together of the film in a form that is viewable and acceptable to the general public.

This includes the determination and selection of the composer and the approval of the music of that composer, and the determination of how large an orchestra will be used for the recording of the music, the determination of additional scenes -- once the picture is put together, whether additional scenes are required, and whether it will require additional shooting.

And sometimes the determination as to the reorder of the scenes. And in general the complete putting together of the picture is the function of the producer.

Q All right.

When would an executive producer be involved in the production of the television film?

MR. GOLDMAN: I'm sorry. I couldn't hear that question.

JUDGE: Would you please read the question?

(Question read.)

THE WITNESS: If an executive producer is involved in a particular project, he will usually be involved at the very beginning.

His responsibility is to supervise from a management or executive level everything that is involved in connection with the production of a picture.

For example, he may not physically be on the set during production.

He will receive reports as to the progress of it. To put it in a slightly different context, he is sort of a staff rather than a line executive.

Q When would an associate producer be involved in the production of a film?

A Well, an associate producer would normally be involved in the later stages, usually, but not always.

He would not be involved in the initial creative process of the preparation of the script. That is usually the function more often of the producer and executive producer.

The associate producer is usually primarily involved in

the physical production of the picture and in the post-production areas; although this is not always the case.

There are many associate producers who do contribute in the preliminary creative writing stages also.

Q All right.

Would the producer function have the power to adjust grievances as they arise in the production of a film?

MR. HACKLER: I object.

There has been no foundation laid as to what he is required to.

It is calling for a conclusion. It is entirely too general. It is not specified as to a grievance --

JUDGE: Objection sustained, Mr. LeVine, on the grounds that it was leading.

Q (By Mr. LeVine) All right.

What function does a producer have in relation to dealing with employees?

A Well, I previously indicated what the physical problems are of the producer; that is, in terms of physical things, scripts, physical production.

And equally important area of responsibility of the producer is in relationship and dealings with the various personnel employed for or assigned to the production of the picture.

It is very common in the motion picture industry where

creative people are constantly meeting and working together to create a finished product that there will be differences in approach, differences in concept, differences in even the conception of the assignment or the responsibility or what they feel their responsibility is on a particular picture.

When there are these differences between the various people, it is the responsibility and function of the producer to resolve these differences, to make a determination as to whom among competing parties has the responsibility for a particular aspect of it.

Many times the disagreements may be jurisdictional in terms of the various labor organization jurisdictions, and other times the disagreement will be as a matter of creative approach.

Still other times it may be that something is simple and mundane as personality conflicts between people who must work together.

It is the function of the producer to iron out these problems, and to make the necessary accommodations so that all people assigned to the particular project can function in a way that management requires; that is, to produce and complete the finished motion picture as economically as possible.

Q All right.

Could you tell me what the duties of a director would

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be?

A Yes. The director is a person who assumes the primary responsibility for the principal photography phase of a motion picture.

And by "motion picture" I am now referring both to television motion pictures and theatrical motion pictures.

He is in effect, the captain of the ship and the person in primary charge of making sure that what has been planned and devebped to the script stage, and what has been constructed by the production department, is translated into film.

He will give the directions to the cameramen; he will give the directions to the actors; and he will give directions to the crews as to the setups for the camera shots, as to where the actors and the extras should be, how they should perform their lines -- everything that is recorded on film is in effect, under his responsibility from the time that he commences serving as the director of the picture.

He may also be involved if he is assigned to the project early enough in the development process of the script. He may work with the writer if he is employed early enough, and the script is not completed.

His concept may be different from that of the writer's original concept, and he may request or require additional writing on the script; again, subject to management's agreement that that concept is a preferable concept.

So, he is involved to that extent in the pre-production process.

Again he is also primarily responsible and is entitled to the first putting together of the film into a motion picture.

And his responsibility goes to that extent also.

Q What is his function in dealing with employees during the creative processing of the actual filming?

A During the filming, he is the man in charge. If there are problems -- physical problems, personnel problems -- they will normally come to him.

His function is to have that picture completed as expeditiously as possible; and subject to certain studio limitations which may vary from studio to studio, he has the authority to make the decision on the spot as to what is to be done when a particular problem arises.

That decision may be subject to being overriden by the producer or executive producer, or by higher management; particularly if it involves expenditures of money that were not originally contemplated.

But basically he is the individual who is charged with resolving any problems that may arise in the course of production.

Q All right.

Would he have the right to discipline employees?

MR. HACKLER: I object to that question.

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What type of employee is he talking about?

JUDGE: Well, in this particular instance, I will take the answer, and thereafter be subject to development.

THE WITNESS: Well, since the director is in charge so far as management is concerned, his opinions and his decision as to the handling of personnel is most important.

He may feel, for example, that a particular actor who may have been hired for the role is just not suitable.

He may have seen certain amounts of the film that has been shot previously, and determined that this actor was wrongly cast for the role; or he may feel that there should have been a different actor.

He may feel that different sets should be produced, different locations should be accomplished.

The original concept may have been for a certain number of extras in a crowd scene, and he may feel that his concept requires the hiring of more extras, or fewer extras.

He will recommend to management, therefore, the hiring and the firing or the releasing of personnel employed with the picture

He may determine that the cameraman is not suited to his needs; and he may recommend a replacement of the cameraman.

These things are rare, usually, because most of the personnel employed in connection with a particular picture

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have already been discussed in advance with the director, usually prior to their assignment to a particular picture.

So the replacement is not a usual situation since the director has been involved with the selection process going in.

And unless he has made a serious mistake, there usually is no such problem.

JUDGE: Suppose he makes such a recommendation? What would be likely to happen?

THE WITNESS: It would depend on what the recommendation is.

And the ordinary course of events, the recommendation would be followed.

If, for example, however, he were to recommend the replacement of a major star, and the primary purpose of producing that picture was to produce a picture starring that star his recommendation might be ignored by final management.

But since management is relying upon the director's concept from the time he becomes a director, to deliver the picture that he has in mind, generally he is given a sufficient leeway to be able to function and to deliver that picture.

If he sincerely feels that there are personnel involved with the project, who for one reason or another, cannot deliver the concept that he has, then management generally will listen to him and go on with what he says.

JUDGE: All right.

Q (By Mr. LeVine) Is there a story editor function at Universal?

A person who would exercise --

A Many television series produced by Universal employ story editors. They are called by various names -- story editor, story consultant, executive story consultant -- but the function is generally the same --

Q Could you tell me what that function would be?

A Yes.

That is a person who generally is a professional writer who was involved in working with the producer and the writer of a particular script; in fact, the story editor would usually be assigned to the series and work on all of the scripts of the series.

And let me elaborate what I mean by "work on."

I mean he will meet with the writers -- the individual writers who will be contemplated for hiring for the writing of the scripts, and will discuss with them their story ideas.

He will make recommendation to the producer and to management that a particular writer's idea is an idea that is desirable for that program, and that writer should be hired for that particular script.

If his recommendation is followed, and the writer is hired, then the story editor will then work with the writer,

make suggestion to the writer in the preparation of the script.

And when the script is delivered -- and again if you recall, I stated that it is usually delivered in two steps: the story first and then the final teleplay -- but at either of these steps, he may feel that the story is not just going to work out or be suitable for the particular project.

And if he so feels he will recommend to management that the employment of the particular writer be terminated at that step, and either another writer be brought in to complete the project, or that the particular script should be abandoned.

If the script is fully completed, he may also be involved -- quite frequently is -- in additional writing on the script.

He is as I say usually a writer, but he works on the particular series. And unlike most of the writers who write an individual script for the series, he is deemed by management to have an overall flavor of the series.

And from his point of view, it is not merely sufficient to have an excellent story and teleplay, or script; it is essential that the script conform to the basic concept of the series; that the continuing characters be consistent to the concept of the series.

And that is one of the functions that he is charged

with because he is a regular employee on that series as opposed to a casual one-time employment situation.

Q All right.

Does he have a function in dealing with employees who would work under him?

A The only employees generally that he would deal with -- and when you say "working under him" I am not sure that is completely accurate --

Q Would he have authority over various people under him?

A He would work with and -- this will vary -- and I hesitate to say "direct" in order -- but he would work with the writers who are writing the particular script.

And as a representative of management, he will instruct them that the story line should be developed in a certain particular way, or that certain dialogue is inappropriate for the characterization of a regular character, and would expect of course that the writer of the individual script would then carry out the suggestions.

It will vary from suggestion to instructions, from case to case.

Q Do problems arise in the story editor dealing with the various writers?

A Yes, quite frequently.

Q What types of problems would arise, to your knowledge?

A Well, the problems may be that the script that is being

written by the writer does not conform to the management concept of what is required for the particular series.

One of the functions of the story editor is to ensure that the writer writes in conformance with the series concept; this is not always possible.

There are many outstanding writers who don't have a particular flare for a particular series.

And as outstanding as they may be in other areas, they just can't write for it; this is one problem that comes up.

And the story editor in this case may have to give this kind of direction or instruction or explanation, or whatever, to the writer to make sure that the script comes up in this form.

There may be creative disagreements. The writer may feel that one way to approach a story is creatively valid and the story editor may disagree.

And the disagreement cannot be resolved between the two -- more often than not, I believe it is -- but it might then go up to the next step of management who will again make the determination as to whose approach is more appropriate.

I would think, and I believe, that more often than not, it is the story editor's approach that is finally selected as the approach to go because he is the one in constant contact with his superiors, and is familiar with the requirements for the particular series.

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Q All right.

Can you tell us what the difference is between story editor and executive story editor would be again at Universal?

A I am not aware of any difference. Quite often it is one of terminology.

I know that in the industry on occasion, but not universally, there are distinctions.

An executive story editor quite often is a person who has worked exclusively on a particular program --

MR. GOLDMAN: I object to the answer as being non-responsive.

JUDGE: I am inclined to disagree. That objection is overruled.

You may continue.

THE WITNESS: Generally speaking, I would say that what is characterized as "an executive story editor" is a person who is not assigned or does not work solely in connection with a particular project or series; but may work on other projects.

He may even be employed on a non-exclusive basis for a particular company.

Generally a story editor is exclusively employed by that company and more often than not is assigned exclusively to a particular series.

However, in part it could be just a matter of ego. Executive story editor sounds better than story editor.

Q All right.

Now, do story editors participate with the producer or director and/or the director function in planning with respect to the production of the film?

A Yes. The story editor is considered as part of management, and his function -- part of his function is to assure that the scripts that are produced are not merely creatively acceptable, but are economically acceptable.

He may have certain limitations within the concept and format of the series as to what kind of locations can or cannot be used.

The number of actors, for example, may be important for budgetary reasons.

The type of set that can or cannot be constructed may be important for budgetary reasons.

He is involved in this determination, and at the same time must convey this decision to the writer of the particular script and to control the direction of the particular script so that that script will conform to the management decision.

Q All right.

In the course of the work that you have described that you personally do, have you had any occasions to negotiate and write contracts for the employment of people in the

categories of executive producer, producer, director, story editor, executive story editor?

A Yes. I cannot recall offhand of any executive story editor contract that I have prepared. But if you characterize the functions as comparable to story editor, then the answer would be yes to that also.

Q And what are the usual and customary arrangements entered into between Universal with respect to persons employed as executive producers, producers, associate producers, directors and the story editor function?

A There are two basic forms of contracts that we use. One is a direct employment situation where the person involved becomes an employee of the company.

The second arrangement is where the particular person who services or desired is employed by a company or a corporation owned or controlled by him.

And in that case, the contract would be with that corporation, and the services of the individual would be left to Universal.

Q All right.

Now, are most of such individuals generally employed for a specific function such as producer, director --

A When they are employed by Universal -- and when I say "employed," I mean again a contractual arrangement for the lending of services to Universal also -- a primary and

specific function is in mind of both the company and the prospective employee; however, the contract with Universal usually contemplate that that particular employee may perform services and a variety of functions.

That even though a person may be primarily employed in the minds of both parties as a producer, the company will have the right to have him work as a director, or as an executive producer, or as a management executive, or as a writer.

Q All right.

Now, how do these contracts set out the way that these individuals will be paid?

A Well, as a result of the 1970 Writers Guild of America Minimum Basic Agrement, there is a requirement that all contracts entered into from that effective date, must have compensation for writing services separately stated; and all contracts entered into on that date must conform to the collective bargaining agreement.

Q All right.

Now, with respect to employees who are members of the Writers Guild, and whom the company has a right to require writing services, are the writing services contemplated as a primary function?

MR. HACKLER: I object to that; I don't understand it. Plus it calls for a conclusion, and I don't understand it.

Mr. Hackler that certain persons listed on General Counsel's Exhibit 3 appear on the membership rolls of Respondent, if I remember correctly.

MR. HACKLER: That is correct.

JUDGE: Mr. Keaton, do you have any questions of this witness?

MR. KEATON: I do, your Honor, but may we have a minute?

JUDGE: Well, it might be advisable to take a short recess at this point.

We will reconvene at 25 minutes to 12:00.

(Short recess taken.)

JUDGE: On the record.

Mr. Keaton, do you want to proceed?

MR. KEATON: Mr. Miller will examine this witness for the Association.

JUDGE: All right.

Q (By Mr. Miller) Mr. Mittleman, is Universal a member of the Association of Motion Picture and Television Producers?

A It is. Universal City Studios, Inc., is a member.

Q All right.

Now, you testified that the producer or producer function engages in consultation with executives, etcetera, over the hiring of writers.

Could you fill out exactly what role the producer function plays in the hiring and/or selection of writers?

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analysis of the project to determine if it can be produced for the budget.

He is one of the experts who is charged with the knowledge of the cost of production, which is one of his prime functions.

And he also participates in the final decision as to whether or not to produce it after the actual budget based upon the script and the other factors, have been determined.

Q All right.

Now, you testified that the producer -- that almost never will the producer be overruled in his recommendation to hire, select or terminate a writer -- overruled by management.

In your experience with management, if it is considering this possibility would the producer participate in those discussions?

A Absolutely, absolutely.

The producer is considered a member of management and is involved in that decision as to how to proceed.

And unless it comes to the point where the producer is to be fired or replaced, his concurrence is desirable if not necessary, in order to keep the project properly proceeding.

Q All right.

Now, the production of either a television episode or a motion picture, or any project, in that, is there

usually a shooting schedule -- a time within which it is contemplated that production will be completed?

A Yes. The production department and the producer work out what is known as a shooting schedule, where the script is divided or broken down scene by scene, and the order of shooting, the principal photography -- is set out scene by scene and day by day.

So that ahead of time unless there are unforseen events which occur, the producer will know how long the picture will take to be produced -- physically produced.

And he will also be in a position to determine if the picture is budgeted at to excessive a price, which scene should be cut, where actors need not be employed, where crews can be switched around, where stages can be utilized as existing stages rather than new stages built.

Q And who makes those decisions?

A Basically, the producer makes those decisions.

Q All right.

Now, those are the overall decisions contemplated within the production schedule; is that correct?

A Yes.

Q All right.

Now, let's assume that a production has commenced and the shooting during the day is going longer than necessary. And I presume -- who is responsible for deciding whether or

not the production company will continue to shoot overtime, for example?

A Well, the director will be involved in that decision and may make a recommendation.

But it is usually the producer who will make the final decision as to whether or not a production should continue beyond the normal scheduled number of hours.

Because the impact is a substantial economic impact, and the economic cost of the picture is a primary responsibility of the producer.

Q All right.

Now, if the decision is made to shoot overtime, are there occasions when certain members of the crew may not be necessary for theovertime work -- where the size of the crew might be reduced?

A Yes. Some of the staffing of the crews are required under collective bargaining agreements.

And there is some leeway in the number of people that may be required.

A decision is always made in connection with long shooting hours as to whether particular actors for example, will be needed in that scene, or required to stand by.

And of course so long as they are required to be available, that is considered work time. These decisions -- rather, these factors must be taken into consideration in determining

the costs that will be involved in overtime shooting.

Q All right.

And who decides whether or not an actor should be on standby or sent home for the day?

A The director and producer.

Q All right.

A If the director will need the actor, the actor will be kept on, and if he is not sure then he and the producer will decide, particularly if it is a high priced actor or an expensive actor, because the overtime cost can be quite substantial.

Q All right.

Now, you testified that the producer is not always on the scene of production.

If the producer is not available, who makes that decision?

A Well, the director will usually make the decision on the spot, because it is an addage in the motion picture industry, "Time is money," and any delays in making a decision do cost money.

Because there are many, many people who are on salary waiting around while the decision is being made.

So the director, in most cases, will make the decision at the time. And if it is quite an important decision or if the producer is on the set at the time, which is frequently

the case, it will be a joint decision.

In some situations, the associate producer will make the decision. He quite frequently will be on the set.

If it is one that has substantial ramifications either creatively or financially, the executive producer will be called in for a final decision.

Q All right.

Now, if, for example, during the shooting of a particular production an employee simply is not satisfactory -- such as a script girl not doing her job, or there is one employee that seems to be causing trouble, who makes the decision on how to deal with this employee?

A If it involves creative areas, the director will quite frequently make the decision.

If it doesn't, the associate producer may.

As an example, there may be a feeling that a particular union employee -- IATSE employee is not satisfactory.

Then a decision may be made at the time to replace him with somebody else.

The associate producer may make that decision. If it is an important person, or there are union ramifications in the area of union jurisdiction, that decision will be referred to the producer or executive producer.

If it is considered that the ramifications are very extensive, then even possible the Labor Relations staff of

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the studio will be called in to determine if there are any collective bargaining ramifications.

Q All right.

If, for example, during post-production or production an employee involved needed a day off -- he a doctor appointment or needed time off -- who would give him permission to take time off or refuse him permission to take time off?

A What kind of employee? If you are talking about an actor, a director or a producer would have to give him approval.

Q Well, let's say during the production of a television series, a supporting actor wants some time off, or an actor, and -- wants half a day off?

A Well, normally that person would go either to the director or producer or both, and they would then determine whether or not that person could be spared, or whether or not that person's services were required.

Or whether or not production could be rescheduled.

And the actor would then be advised "Yes, you may take the time off," or "No, you can't because we will need you and it is essential. Can you not change your other plans to a different time?"

Q All right.

Now, are you familiar -- let me show you a document identified as General Counsel's Exhibit No. 3, with specific

reference to pages one and two of the named individuals at Universal City Studios, and aks you whether to the best of your knowledge, the people named were functioning for Universal in the capacity as indicated as of February 1, 1973?

You take your time as you look at that. And let me show you the one that has the changes penned in.

A Oh, yes.

JUDGE: Mr. Miller, the document you are showing the witness is the one that has been marked as General Counsel's Exhibit 3 for identification?

MR. MILLER: General Counsel's No. 3; yes, your Honor.

MR. HACKLER: If I am not mistaken, haven't we admitted that in the pleadings, that --

THE WITNESS: It contains the additional names -- the additional three names that I was asked about: Stephen Heilpern, Leonard Kaufman and Frank Pierson.

MR. MILLER: We are trying to pinpoint the time that they were functioning in these capacities, your Honor.

THE WITNESS: Generally, that is correct. In one case, Frank Pierson -- you said as of February 1?

Q (By Mr. Miller) As of February 1, 1973.

A I believe at that point, Frank Pierson was doing a rewrite on a theatrical picture.

As of approximately the 20th of February or thereafter,

he was functioning as the producer of that picture in connection with pre-production activities.

Q I see.

Are there any other exceptions on the list?

A I believe this is accurate as of that date. Again, there is one further qualification.

Stephen Bochco, who was an employee of Universal, had been assigned at that point as producer of a television series, if it were to be sold, which in fact it was sold -- licensed to the network, subsequent to February 1.

Q All right.

Now --

MR. HACKLER: I don't quite follow that.

Did he go off the payroll at Universal?

THE WITNESS: No. He was on the payroll --

MR. HACKLER: But not as a producer?

THE WITNESS: But not assigned the function of producer as of February 1.

MR. HACKLER: I see.

Q (By Mr. Miller) All right.

Now, pointing your attention to the name Frank Price on the list, are you familiar with Mr. Price's duties and responsibilities?

A Yes.

Q All right.

person who will contact me in that situation will be the associate producer, producer or executive producer.

It is that person -- the associate producer, producer or executive producer -- to whom the problems will have been directed initially; it would have come to him as a problem.

Q All right.

And then he will call you?

A Yes. Unless he can -- or unless he feels he can manage it and handle it and resolve it by himself.

MR. FISHER: I have no further questions.

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: On the record.

Mr. Hackler, if you will go ahead, please.

CROSS-EXAMINATION

Q (By Mr. Hackler) Mr. Mittleman, so far as Universal Studios -- Universal City Studios, Inc. is concerned, you are in the Labor Relations Department, or in the Legal Department, or are there separate departments?

A I am in the Legal Department.

Q And is there a separate production department?

A Yes, there is.

Q And is there a labor relations department?

A Yes, there is.

Q What other department -- I am speaking now of the

might have in requiring us to change certain employment practices.

Q I see.

I think I understand. In other words, coming from the bargaining table, you or Mr. Sheinberg, or whomever happened to be attending, would discuss with him what impact certain things might have on --

A I discussed it with Mr. Sheinberg and Mr. Price; Mr. Sheinberg did not attend any of the meetings.

Q I see.

But you were talking to him in his capacity as you described before, of the impact of possible changes in the agreement?

A Right. Upon management.

Q All right.

Now, while we are on him, he is a senior vice-president of Universal TV.

Is that -- that is the title given to him here?

A I believe that is his title, yes.

Q And I gather from your testimony, that he is an executive capacity, rather than a staff or line capacity?

A That is right.

Q And others report to him, but he is not primarily out producing a motion picture?

A Thatis correct.

A Usually he is not required to perform those services at the studio, no. He may perform them -- so long as he performs them within the time limit, that is all that counts.

Q And some of the free lance time limits are not a week; isn't that true?

A Yes. There are longer periods for scripts.

Q As long as how much?

A I would have to check the collective bargaining agreement, but the whole process to a full script could last easily a month or two.

It depends on how fast he turns n the material and how many changes the producers requires and how fast he turns in the changes.

There are variable amounts of time.

MR. HACKLER: I have nothing further.

JUDGE: Before I listen to redirect, there is one question I would like to ask you, Mr. Mittleman.

It may be that you have already answered this completely, but I didn't catch it.

There was some testimony you gave with respect to a relationship between script writer and story editor.

I got the general impression that there are occasions in which script writers would submit a work to the story editor; is that correct?

THE WITNESS: Yes, your Honor.

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JUDGE: And what would the story editor do with respect to the script that was submitted to him by the script writer?

THE WITNESS: He in conjunction with the producer, or the associate producer, or the executive producer, or all three of those, would decide whether or not they wish to employ the writer to do a complete script based upon the writer's idea or work.

If the decision were made to employe the writer, he would then supervise the writer, work with the writer, give the writer direction, and make sure that the writer is writing for the mood and the particular series of particular concept that is required.

In fact, he would really be the closest supervisor of the free lance writer's work.

The free lance writer would do the actual writing at this point. And the story editor and the script supervisor would discuss the writing with him and make sure that the writing is progressing because there are time problems involved.

The scripts have to be delivered within a certain period of time in order for production to take place. And they would instruct the writer as to any revisions that might be required.

And when the script is turned in, would make recommendations if additional writing services are needed on the script,

and if necessary, the hiring of another writer; or he might even do the rewrite himself afterwards.

JUDGE: You said that the story editor and producer and possibly someone else whose name escapes me -- the three of them would decide whether to hire the script writer?

THE WITNESS: That is correct.

JUDGE: What part, if you know, does the story editor play in that decision, if any?

There must be some part he plays because you said he did.

THE WITNESS: Yes. The primary function in television -- I will direct my response initially to television, your Honor -- of the story editors to make sure that appropriate scripts are delivered for production; that is basically his function.

He therefore is hopefully the most knowledgeable person in the script area regarding that particular program.

He is delegated the responsibility of working with the writer to make sure the writer delivers material that is appropriate for that particular program.

JUDGE: My question was: what part does he play in the initial decision to employ that particular script writer in the first place?

THE WITNESS: Well, his recommendation -- I would say it works both ways -- two ways -- generally speaking, his

recommendation not to employ the writer because the story idea is not satisfactory is usually followed by question.

For a number of reasons; he is usually the most expert in the story area. He will be the person working with the writer on that story; and if he does not have faith in the story, it just makes no economic or business sense to have him working on a project that he doesn't have any faith in.

His recommendation to hire the writer also carries with it a great deal of authority.

But it is not the final authority.

Quite frequently the story may have to be submitted to the network for the network's approval. The producer may have the authority on his own and in conjunction with the story editor to just accept or reject the story editor's recommendation as the joint decision is made.

If it is important enough for an expensive enough project, they may take it to the very senior management to make a decision as to whether or not the writer will be hired.

But in a regular series, under normal circumstances, it is the story editor's recommendation and joint decision of the story editor, associate producer, producer and executive producer, and it normally not go any higher in management; the decision would be made on that level.

JUDGE: All right.

Any redirect?

MR. LE VINE: Yes, your Honor, I have several questions.

REDIRECT EXAMINATION

Q (By Mr. LeVine) Where did you acquire your knowledge as to the functions of the various supervisory-type employees that you discussed on direct?

A In general the 14 years in the motion picture and television industry.

I have been involved as I testified before, in collective bargaining negotiations since 1966 on a regular basis.

At Screen Gems I was, as I also testified, studio counsel. And as such sat in on all the regular executive meetings which were held weekly, at which were present the head of the Business Affairs Department, the head of the Production Department and of the Casting Department, the head of the Post-Production Department, and the Studio Counsel.

And the studio problems -- the production problems -- of the past week were discussed and the potential problems in the future were discussed.

At Universal I have been involved in the collective bargaining and Guild Agreement area quite extensively.

And whenever any problems arise in this area, I am contacted either by the Labor Relations Department, whose expertise is primarily in the Craft Union and not in the so-call Talent Union agreements, which are the Directors Guild, the

Producers Guild and Screen Actors Guild agreements, and whenever there are any problems on particular programs, the producer or the executive producer, or the executive in charge, or occasionally the story editor or the associate producer, will contact me directly and ask me for advice.

Q All right.

From your personal knowledge, can you give an example of a producer handling a grievance involving a writer?

A Yes. A situation came up last year with a producer on this list, as a matter of fact: Paul Mason, who was producer of the series "MacMillan and Wife".

A dispute arose as to whether or not a writing commitment had been made to a free lance writer.

That dispute was taken to the producer, Paul Mason; it was not resolved at that level. The writer in making the claim and the producer had exactly contrary views as to whether or not a legal commitment had been made.

It was referred to me, and eventually wound up in the conciliation procedures of the Writers Guild; because Mr. Mason and I were unable to resolve it to the satisfaction of the individual writer and the Writers Guild.

Q Was Mr. Mason at that time on loan out?

A He was.

Q To Barsu; is that the name of the company?

A Yes.

Q All right.

And did the producer make the initial decision in that situation?

A Yes. The producer made the initial determination on behalf of the company that a writing commitment had not been made, and conveyed that decision to the writer and his agent.

And that then triggered the Guild conciliation procedures on the basis of the rejection of the claim by the producer.

Q Do you know whether it occurs at Universal or at other companies within your personal knowledge that shows are shot outside the geographic area of the IATSE and basic craft agreements?

A Yes. Particularly theatrical motion pictures are quite frequently --

MR. GOLDMAN: I object.

There has been no showing your Honor, as to what the jurisdiction of the IATSE or the Basic Crafts agreements are. I don't know what the relevance is.

And not only that, but who the basic crafts are. I know some basic crafts where they have international jurisdiction.

JUDGE: What is the purpose, Mr. LeVine?

MR. LE VINE: This was with respect to collective bargaining functions of the producer.

JUDGE: In other words, you are telling me that this is a preliminary question?

MR. LE VINE: That is correct.

JUDGE: I am going to sustain the objection, nevertheless.

See if you can't get your point some other way because by this method, you may be raising a question as to the accuracy or content of the contract, and the jurisdictional issue that is involved.

Q (By Mr. LeVine) All right.

Now, can you tell me, Mr. Mittleman, whether producers who are on distant locations from Universal, participate in the negotiations with labor organizations at the site of the production?

MR. GOLDMAN: I object.

I don't know what the definition of "distant locations" is. I think it is unintelligible. I think it is improper redirect.

JUDGE: Please read the question.

(Question read.)

MR.KEATON: Your Honor, if I may, Mr. Hackler opened that very line of questioning when he asked this gentleman whether producers and directors participate in labor negotiations.

He went into this for quite a while.

JUDGE: Gentlemen, I had the reporter read back the

question.

The objection to it is overruled.

I will take the answer.

THE WITNESS: Where a production occurs involving the use of labor represented by a labor organization with whom the particular studio does not then have a collective bargaining agreement and where therefore, an accommodation with the local union is required for that particular project it is quite common for the producer or associate producer to negotiate an interim short-term agreement -- or it could be long-term, but usually short-term -- for the particular production.

Q And how would that arise? What type of situation would that be?

A If the picture were shooting on location and there might be a local Teamsters' Union involved or a local Laborers' Union.

The conditions of employment -- the minimum salaries, the minimum hours, seniority, layoff rights, grievance procedures -- anything of this nature.

Q All right.

With the exception of Mark VII, Ltd., do any of the Universal employees who are on loan-out and whom you have discussed previously, have any capital invested in the productions on which they are employed, to your knowledge?

A The financing of all of the motion pictures on which the

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the complaint, or 10 years ago?

MR. MILLER: I have no further questions.

MR. GOLDMAN: Or are we talking about the future?

JUDGE: Mr. Goldman, just a moment.

Mr. Miller said he has no further questions. So it comes to you.

If you have a relevant question, we are here to hear that.

MR. HACKLER: I have just a couple.

RECROSS-EXAMINATION

Q (By Mr. Hackler) NOw, this example of Paul Mason -- just so I am clear -- I understood you to say that a dispute came up with a free lance writer over whether a commitment was made?

A That is correct.

Q All right.

And what did you mean by a "commitment"? Whether someone had engaged his services?

A Whether -- that is correct, whether his services had been engaged to write a teleplay.

Q And who did he claim had engaged his services?

A Universal City Studios, Inc.

Q What individual did he claim had dealt with him? It was Mr. Mason, wasn't it?

A I believe Mr. Mason and the story editor also; I am

not positive about that.

Q All right.

So we are clear on what you are talking about, the complaint that was made was by the free lance writer, that Paul Mason had made a written or oral commitment to employ, and he hadn't been paid?

A No. The complaint was that Universal City Studios, Inc., had made a commitment to him.

Q Through Mason? He was complaining that Mason -- against Mason.

And Mason said "I didn't make the commitment." Is that correct?

A That is correct, as I recall it, yes.

Q So Mason's participation in that grievance, which was a grievance of a guy contending that he has been engaged as a free-lance writer, was to say, "I didn't engage you," and he was supported by management and it went to the Guild and the grievance procedures?

A That is correct.

Q All right.

Now, let me ask you in that connection: the word "commitment" -- there is a provision, is there not, in the contract, reading from page 17 of GC-2, which is Article 5 Sub-Section 5, which reads: "A 'deal is made' within the meaning of both 1 and 2 above when a grievant is reached by

have you had occasion to deal on behalf of any of these hyphenates listed here with either the Producers Guild or the Directors Guild for the producing or directing function with respect to any of these named persons?

MR. KEATON: I'm not clear. May I have the question read back?

Was he asked on behalf of the --

JUDGE: Just a moment. Would you read the question, please?

(Pending question read.)

MR. HACKLER: Let me rephrase it. I'm sorry.

Q (By Mr. Hackler) All right.

Now, for getting membership, according to your testimony, you have wide experience in Labor Relations with the non-craft part of the industry.

Did that extend to dealings with the Directors Guild with respect to its contract and the coverage of it, and claimed violations of it in your experience?

A Yes, it has.

Q All right.

And you have persons listed here as directors. To your knowledge, are those persons covered by the directing -- in a directing services, covered by the Directors Guild contract?

A The directing services would be covered by the Directors' Guild of America agreement.

Q And there is a Producers Guild, too; isn't there?

A Yes.

Q And you have a contract with it, do younot -- that is, your studio?

A Yes.

Q All right.

And those that are listed here as producers, executive producers, co-producers, producers and executive -- I think those are all of the possible classifications -- are they covered in some respect as to their producing functions by the Producers Guild contract?

The services of associate producer, producer and executive producer, as those terms and services are customarily understood in the motion picture and television industry, come within the Producers Guild of America collective bargaining agreement to which Universal City Studios, Inc., is a signatory.

Q Thank you.

And so with respect to some of these individuals -- I'm not going to pursue it -- it is a fact that a person on this list, or perhaps -- or maybe other persons used by Universal -- might find themselves on a given production covered by three different collective bargaining agreements covering three different functions they are performing in a production itself?

A I believe they are not members of the Writers Guild.

MR. KEATON: That's all I have.

JUDGE: Any of the other gentlemen have any questions on this one point?

MR. HACKLER: I have nothing.

JUDGE: This time you are excused.

(Witness excused.)

JUDGE: We will still be in recess until 10 minutes after 4:00.

(Short recess taken.)

JUDGE: On the record.

Call your next witness, please.

MR. LE VINE: As our next witness, we will call Bernard Barron.

Whereupon,

BERNARD BARRON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name for the record, please?

A My name is Bernard Barron.

Q And what is your address?

A 2422 Westridge Road, Los Angeles 90049.

For eight years I was studio manager at Columbia Pictures Corporation. I was president of the Eclair Corporation, which is a manufacturer of professional motion picture equipment.

And at one time or another, I have attempted to operate my own businesses with varying degrees of success.

Q All right.

As part of your background, are you familiar with the duties of the various personnel involved in the production of television and films and series and theatrical motion pictures at Twentieth Century?

A Yes.

Q And in the industry in general?

A Yes.

Q All right.

And what are the duties of an executive producer -- or the producing function at Twentieth Century?

A The producer is the chief executive in relation to a film project.

It is his store, so to speak, and he runs the show in relation to a specific film project, whether it be a feature film or a television series.

Q All right.

And could you go into some detail as to the specific duties that a -- of the producer function?

A Okay.

I can break it down probably into about five principal categories.

The initial conception is category one; the planning is the second phase; and execution for the third phase.

And then there is completion, and finally exploitation.

In other words, from the beginning of the concept of the film or television series, through all these steps necessary to plan it, and then all through all the steps involved in the physical production of the film.

And finally into the finishing portion of the film which we call traditionally in our industry, the post-production phase.

And finally through the distribution and exploitation of that project; the producer has the supervisory and an overriding responsibility for that entire project.

Q All right.

Could you tell us, starting with the initiation of the idea, how he functions and what his duty is, and responsibilities are?

A Well, it varies, of course. If you are talking about a theatrical motion picture as opposed to a television series, one way or another, the initial idea or the original idea surfaces; whether the producer thinks of this idea himself, or in a sense creates it, or whether he hires someone to create

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it under his supervision, or whether he purchases an existing idea, or an existing concept.

The producer, in a sense, acquires it. And he begins to involve himself in the negotiations, financial and otherwise, to bring it into a viable state of life.

Once there is a deal set with a production company such as ours, the producer then has the responsibility of fully developing that idea to the point where it can be approved as a going project.

That involves perhaps hiring a writer or supervising the services of writers, or perhaps providing those services on his own to create a script, which is similar perhaps to a blueprint in construction.

And developing all the other creative elements that would be necessary to determine whether or not this is a successful or potentially successful project, which would be in many cases, to suggest potential casting of stars, to suggest the potential directors who would be available, and to suggest the style and the type of film that it is likely to be, and even into such areas as analyzing the potential audiences.

And to developing evidences as to why this would be a successful project. And further, to developing all the financial information that is necessary to produce a successful project; what it would cost, how it could be controlled, and what the market for it is, etcetera.

And once all of those elements have been refined sufficiently for a determination as to whether or not the project is going to be approved, it will be submitted for approval.

And senior management of the corporation would act upon that submission.

And once it is approved, again it is the producer's responsibility to begin to set the gain plan into motion; that is, to hire in the necessary people to make this come to life.

To hire in the director, to hire in additional writers if additional writing is necessary, to cast the picture with the actors, and to hire in the production personnel who will break the project down and develop the cost factors relative to it.

And to schedule it for production, to arrange for all the production facilities necessary and the crew personnel necessary to operate.

He will supervise all the creative and all the cost functions in relation to that project.

And then once the schedule has been approved and the budget has been approved and the final go-ahead has been achieved, the producer is responsible for seeing to it that the film is physically produced in relation to the perimeters that had been approved by senior management.

At the completion of photography, the producer is further responsible to see to it that all the finishing elements necessary to make a completed film are performed in accordance with the plan and with the budget.

It is his responsibility to select the composer, the conductor, and to make those creative determinations as to the style of the music involved, as to the amount of music and where it is necessarily going to be in the film, the editorial style of the film; to provide for the personnel necessary to complete the picture.

And if it is a motion picture, the producer then finally has a responsibility as to the exploitation and sale of that picture; to make provisions for all of the things that he has to do in terms of contributing to the successful exploitation of the picture.

If it's a television series, he has an ongoing responsibility to the network, for example, in relation to their promotion and exploitation.

So I look at it as being a five-step process from conception to exploitation.

Q All right.

And could you tell me what the difference between an executive producer, a producer, and an associate producer would be at Twentieth Century?

A Yes. An executive producer is very simply a man who

supervises one or more producers.

The producer we have just discussed, I hope that was sufficient, and the associate producer, is sort of like an assistant general manager, if you will accept the concept that the producer is a general manager.

The associate producer generally speaking is an extension of the producer in order to complement him in areas where he doesn't have either by background or training, all the experience or expertise he would like.

Q All right.

Would this be substantially the same with other companies, to your knowledge?

A As far as I know, it is substantially the same throughout the industry.

Q Now, with respect to the producer function, what is their function in dealing with employees as they work on the production?

A Well, the producer is the boss, so that he will select the people and hire them.

He will terminate them and see to it that they have the facilities and equipment that they need.

He will supervise their jobs to the extent that they are doing what they are supposed to be doing in the way that they are expected to do it.

And he is to perform all the other functions that a

boss is likely to perform; if there are disputes he will solve them and if there are complaints, he will attend to them, and if there are requirements, he will examine them.

Q All right.

You mentioned that they handle problems as they arise in the production; could you give us some examples of problems that arise with employees that would be dealt with by the producer function?

A I can give you a personal example of one that happened. My wife is an actress, and on a show called "Bonanza" she was performing in the role of a trapeze artist.

That was her assignment as an actress.

And she had the principal role as the female in the show, and she was to do all the dialogue.

The high wire work -- the business of climbing the ladder and going on the high wire -- was to have been done by a double; because she is not trained to do that, and it is pretty dangerous work.

And the second day into production on the set, the director instructed her to start to climb the rope.

And she said to him, "I am not going to do it, and I don't have to do it."

And he said, "We are running out of time and we don't have time for the double to come in, and I want you to climb the rope."

And she refused and she went to the producer and told him her problem.

And he agreed with her and told the director to use the double.

Q All right.

Could you tell us what the function and what the duties are of a director?

A Yes. The director is charged with the responsibility of interpreting the producer's desires in terms of the physical production in front of the camera once the film is rolling.

The director, in a sense, is delegated by the producer to interpret the script in accordance with the plan laid down by the producer once physical production starts.

And that involves the handling of the actors, the placement of the camera, the direction of the crews, the utilization of the sets and wardrobes and makeup and all the physical elements relative to the production in front of the camera.

Q Does the director participate in the hiring or recommendation of hiring of any of the production personnel who work on the set?

A I am not really sure what you mean by production personnel.

Are you talking about crews?

Q Crews.

A Well, the director obviously is a very important members of the creative force of that film.

And the director's desires are going to be of a paramount interest.

If the director, for example, has a cameraman who he has worked with in the past and with whom he has a preference for, unless there is some reason that that cameraman would not be employable, the director probably would get his request.

And if he would say, "yes, I want that cameraman," he would get him.

He certainly has a tremendous influence over the decisions relative to the members of the cast; particularly, in secondary parts.

And because he does work for that crew, the director has delegated to him by the producer, a lot of authority on the set.

And absent theproducer -- or short the producer, the director is the boss on the set.

Q All right.

And does the director deal with the employees as they work on the production?

A Of course.

Q Do problems arise in the --

A Thousands of problems. The director has to deal with them on the spot.

The actors can be unhappy with their wardrobe or their dressing room is the wrong size, or the man she is working with doesn't know his lines, or the people who were supposed to be there with a certain piece of special effect equipment, haven't shown up; and then a last minute change in the plan has to be made in order to shoot around that missing piece of equipment.

And on the stage at the moment the director is the man who has to make those decisions. And he makes all those decisions up to the point that there is a major economic impact or a major scheduling impact; at which point he then has to refer to the producer.

Q All right.

And during the daily production on the set, when the director is in charge, who sets the hours that they will work?

A Well, you are talking about several different groups of people.

They may be set by several different people.

The director works very closely with a unit manager, and production manager on the show. The director will -- at the outset when the plan is first determined, the director in concert with theproducer and the production staff, will

determine what the schedule of the picture is going to be, how many days it is to shoot, and how many hours each day, and what is to be done each day, and things of that sort.

Once that plan is established and a budget is generated in response to that plan, very little in the way of deviation is permitted without a great deal of discussion and additional decisions to be made.

So once that is established, the people who have delegated authority under the director, -- is the assistant director on the stage for example, will give the calls to the extras and tell them what time to arrive.

And he will determine whether or not they can leave at the end of the day, or what time they can leave.

So long as everything follows the plan, the assistant director knows what his job is, and the director knows what his job is, etcetera.

The head of the makeup department, for example, -- if you have nine or 10 makeup people, he might tell his makeup people what time to report in the morning and what time to leave in the evening.

And that has all been predetermined out in advance.

Q All right.

And would the director have the authority to authorize overtime for any employees on the set?

A He should certainly have that authority. He doesn't

always but he could.

And that is because there is a vast difference in the kinds of projects we are talking about.

On a television series, he has a very restrictive function; it is conceivable that the director would not be permitted to make that decision, but he would have to defer that to the producer.

On a theatrical motion picture that has a long shooting schedule and a rather flexible budget, it is entirely possible that the producer would delegate that authority to the director.

Q All right.

And could you tell me what the story editor, or executive story editor function is?

A At our studio, we don't have either. We have only two people in that category, and they are called "executive story consultants."

But it is my understanding that generally throughout the industry, the functions of all these people are identical.

They are -- they have the responsibility on a day-to-day basis for acquiring and developing the scripts necessary in relation to an ongoing television series.

Specifically, they supervise the writers' functions.

Q Could you describe the nature of the duties of the story editor function?

A Initially the story editor will prepare for his producer, a list of available writers who are suitable to the project.

He will discuss with the producer each of these people on his available list as to whether or not this individual or that would be the most desirable.

He will conduct interviews with the writers, will participate in all the stories that they place, and participate in the decisions that are made in relation to the story and teleplay.

And once those decisions are made, he will supervise the writers who have been assigned to see to it that the stories and the teleplays come in consistent with the goals of the operation.

Q And who participates in the decision with him?

A Well, almost all creative decisions are made as kind of a group effort, particularly in this area.

You have a conference that will take place with the executive producer, if there is one, the producer, the associate producer, and the story editor and frequently the writer, at which a discussion will take place relative to the merits, the costs and the values of a particular story.

And it isn't always easy to tell you who makes that decision because it is a give and take kind of discussion. But at the end of that discussion, a decision is made.

And it is a participatory decision for the most part.

The responsibility for that decision however rests with the producer and the executive producer, if there is one.

Q All right.

But what I actually meant by that, the decision to select a writer?

A Oh, all right.

Who makes the decision?

Q Who makes the decision?

A Yes.

Q Would a story editor?

A It is conceivable that for the most part, it is a producer who makes that decision.

Q Is the producer alone?

A Well, very rarely are any of these kind of decisions made alone.

Q All right.

A Generally speaking, they are the result of a discussion or a conference.

Q And does the story editor have a function in dealing with employees as they work under him?

A Well, he has to -- again, as I said, he supervises the writer, so that he will assign -- make assignments to the writers.

He will discuss their projects with them.

When the story is turned in, he will analyze and meet with the writer and instruct the writer as to what is wanted, what is good, what is bad, what needs to be rejected, what needs to be strengthened, what has to be sharpened up, and what has to be eliminated.

He will supervise the writer; and those of the employees that he has contact with.

Q All right.

And does he make any recommendations with respect to the termination of writers?

A Yes. Decidedly he does.

Q Could you give us the circumstances?

A Well, we find particularly in television, that some of the top writers have a tendency to accept more commitments than they are able to handle, really.

And every now and then you find that you are getting into a bind, having made a commitment to a writer whom you know is going to be unable to deliver in time, because he has too many other commitments that he is favoring.

And because we operate on a very restricted time schedule in television, we have commitments and air dates with the network that we have to meet.

It is not infrequent that the story editor will come into his producer and say, "Look, I know we have got a commitment with --" so and so "-- but I would like to get a

script from him. But I know what he is doing over at Warners and I know what he is doing over at Columbia, and there is no way that we are going to get that script in time, and we had better dump him and go to somebody else quick or else we are not going to be on the air with that show."

Q All right.

Now, are some of the employees in the categories that we have just discussed, members of the Writers Guild, to your knowledge?

A You were talking about the executive producer, producer and associate producer and story editor?

Q Correct.

A Yes.

Q Are any employees in these categories at Twentieth Century Fox members of the Writers Guild, to your knowledge?

A Yes.

Q All right.

I'm going to show you what has been marked as General Counsel's Exhibit 3 for identification, and it will be on page four, which is a list of people.

Are these people to your knowledge members of the Writers Guild?

A I believe they are.

Q All right.

It has been specified by the -- stipulated by the

updating the complaint on an almost daily basis -- the last amendment being made, to my knowledge, yesterday.

Now, is not a matter of gamesmanship. That is why I address it to the General Counsel.

It may well be -- you are certainly in charge of the hearing, your Honor, and it may well be your view.

I don't know what Schofield means in that regard, and I don't know what the Board's rules are as to the participation and the degree of participation of the Charging Parties.

I have just been through one of these 8(b)(1)(bs) -- it is in the Ninth Circuit -- where one who is not a Charging Party, came in and got party status, and is carrying on the litigation.

But that is the only basis for my objection.

JUDGE: Now, Mr. Hackler, the --

MR. HACKLER: We really haven't saved any time, but that's all.

JUDGE: Mr. Hackler, I certainly hope that the efforts that you gentlemen put in in the last day and a half have shortened the hearing, and I believe it will undoubtedly do so.

In brief, in general answer to your really question to me, I am bound by the rules of the Board.

The Charging Parties are full parties. The major thing that they will not be permitted to do is to expand on the

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And I would like to add one more thing: I am sick and tired of misrepresentations made to you all day long today to the effect that we have tried in some way to make this a tool in the strike that is going on.

The Guild has made it a tool by calling these hearings and by intimidating these people, and all we are doing is trying to protect our interest with that respect, and will continue to do as best as we know how.

JUDGE: Mr. Keaton, all right.

All of you gentlemen, I hope, have had a chance to say what is on your mind.

Now, let's get back to the trial of this case. The objection to the current question is overruled, and I would like to get an answer as soon as possible.

THE WITNESS: May I have the question again?

Q (By Mr. Keaton) If you don't mind, I will rephrase it.

A All right.

Q In your experience -- based upon your experience, Mr. Barron, if a producer were to be disciplined along the lines described in Rule 30, which you have read a moment ago, would it have any effect on his effectiveness of the producer to your company, and if so, what would be the effect?

A Well, it would certainly be totally destructive to the producer's effectiveness.

Q Would you explain that answer?

A If I may take it back a little bit. Okay.

The producer's -- among the -- producer's principal responsibilities are the overall supervision of the tastes and creative judgments that are necessary in the production of either a theatrical motion picture film or a television series.

The producer must meet with and discuss with and supervise the writers who are hired.

And equally as important, the producer has to be able to attract the top writers to his series.

We are in a fiercely competitive business, and in any kind of business venture, there is only a handful of top people.

There is an awful lot of middle ground people and there is a handful of people at the lower end of the scale.

That company which wishes to and needs to succeed has to be in a position to attract the very top writers possible. And to the extent that the producer would not be permitted to deal with those writers, and would be dishonored among them, and would be subject to sanctions of their Guild, his ability to attract those writers would be totally destroyed.

We would in a sense have a producer with no television series to produce.

Q All right.

You mentioned earlier that in the creative area on a

television or theatrical production, a great deal is done by management committees.

Now, relating specifically to such things as hiring casts, employing writers and employing the key below the line elements such as cameramen and head wardrobe person, and so on, or possibly the head of makeup, would you describe to us who is on this kind of a team, and how this team reaches a decision?

A Well, the way in which the team -- I will answer part two first.

The way in which a creative team reaches a decision is still a mystery to all of us. We have been unable to solve that problem.

But generally speaking, you are talking about what we call the production executive group, which would be the executive producer, if there is one, the producer, the associate producer, the director, and very often the production manager or the unit manager.

These people together sit down and discuss in either one meeting or a series of meetings the various alternatives that are available to them in each of these classifications.

When you talk about a wardrobe head, for example, the kind of considerations that have to be taken into account are, number one, how much of a creative input is required on this particular show.

Number two, do the creative inputs available from a person "X" satisfy the needs of our show?

Number three, how expensive is he?

Number four, how expensive is he to work with?

In other words, he may not charge you very much per week, but his way of operating may push your budget right out the window, and on down the line.

Can he be trusted to comply with our schedule and get the work in on time?

Number six is: is he reliable, etcetera, etcetera, etcetera.

And all the various members each of whom in this discussion would have something to contribute, either having worked with this person in the past, or having had a financial calamity with him on some other program, or what have you, all of them put their information together and discuss it out.

And somehow or other, a decision is elicited as a result of that meeting.

The same thing would hold true, of course, in relation to casting of principal actors.

And always it is done under the supervision of the top "Joe" who is the producer.

When you have a determination to be made for the selection of a writer on a television series, is there a

similar team operating, and if so, what does it consist of -- who does it consist of?

A Yes. To understand a little bit more, if I can flush it out a little bit more.

Q Please do.

A Because there is a need to deliver a new television program each week to the network those people whose services take longer than a week to perform, have to be supplemented by additional people.

In other words, a director, for example, needs some time to prepare. Then he needs a week to shoot and then he needs some time afterwards in the post-production area.

So it isn't possible to use one director for all the episodes that you have to deliver, just as it isn't possible to use one writer for all the episodes that you have to deliver.

Sometimes the writer will take four to six to eight weeks to deliver a script for a one-week show.

So that generally speaking there are ongoing conversations throughout the course of the production of a television series as to additional people who become available and to evaluate their availability and their desirability, and ongoing decisions are made throughout the course of the series.

Hopefully, somewhere near the beginning you can lock in,

if you will, on a team -- five, six or seven writers who you can continue to repeat throughout the year and two or three or four directors who you can continue to recycle throughout the year.

And once those decisions are made, if it isn't necessary to move off of that spot, those decisions don't have to be made any longer.

Q All right.

I think from there, I would like to go to the basic question that I was asking --

A I am sorry.

Q -- and a team that makes the selection of that term?

A Well, it would be essentially the same team, except not including the director.

So that would be the executive producer, the producer, the associate producer and probably the production man.

Q Would this story editor or story consultant play any part in that?

A Yes. I think he would.

Q All right.

Can you tell us whether directors perform any function in handling grievances?

A Constantly.

Q Could you give us some examples?

A Yes; because problems are coming up all the time on the

set.

And the boss on the set is the director. And when a problem comes up, it is brought to him.

The question as to whether or not somebody had a call at 7:00 or at 7:30, or whether or not they are to be permitted to leave the stage at 4:30 or 5:30.

Any of those disputes whether -- whatever it is, whether it is connected with the physical production of the film on the stage the boss is the director and all those complaints, grievances and problems are brought to him.

Q All right.

Now, who, if anyone, makes an initial determination of disputes about credits amongst the five, six or seven writers that you might have in a TV series?

A Who -- let me have the question again.

Q There is sometimes a dispute about screen credit of various writers; is that correct?

A That is correct, yes.

Q All right.

Who makes the initial determination of that kind of dispute?

A Generally speaking, on a feature film, it would be the producer. On a television series, it would be the producer, and the story editor.

And they would then submit a tentative list of credits

to the Writers Guild.

Q What happens if the Guild disagrees with that determination?

A Well, I don't know -- the Guild has to approve it. But anyone of the writers could also dispute it, at which point they have an opportunity to arbitrate it before the Guild's Credits Committee.

MR. KEATON: I think that's all I have. Thank you.

JUDGE: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE: Cross-examine?

MR. GOLDMAN: Yes.

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Barron, I take it you have people occupy capacities of straight directors?

A Yes.

Q Employed by Twentieth Century-Fox?

A Yes.

Q And you have people employed in the category of straight producers of Twentieth Century-Fox?

A That is right.

Q All right.

And you have people employed in the category of straight associate producers at Twentieth Century-Fox?

A All of our associate producers are straight.

Q All right.

I notice on this list that was supplied to us as of a few days ago, that we have the capacity listed, for example, for Gerald DiPego "writer/associate producer."

I take it that is a different capacity other than a straight associate producer?

A No. The definition of an associate producer as I attempted earlier, Jerry, was somebody who will perform as an extension of the producer, to supplement the producer in areas where his expertise or his background isn't -- doesn't have all the strength that he would like it to have.

In this case -- in the case of Jerry DiPego, he brings creative inputs at the decision level that his producer is not able to perform.

And so he has been hired in both as the writer and as an associate producer to supplement those areas.

Q In other words, he complements the producer?

A He complements the producer.

Q He can perform -- he can engage in activities that a producer is unable to engage in, such as a writing function?

A Or unwilling and not having the time --

Q Such as the writing function -- polishes, touch-ups?

A Yes, certainly.

Q All right.

Now, is there a distinction in your company between a

producer and a writer/producer?

A The only distinction would be that the hyphenate -- the writer hyphenate has the ability to perform in the writer's area.

Q All right.

Now, we have on this list, Mr. Barron, writer associate producer, writer/producer/ director.

And we have writer/producer, writer/director,writer/ executive.

A I don't have that list.

Q I'm sorry. I thought you had it in front of you.

A No.

MR. KEATON: May we go off the record for a moment so I can explain something?

MR. HACKLER: Sure.

JUDGE: Well, I don't like to do that on cross-examination.

MR. KEATON: It is not going to affect this witness because he didn't prepare this list.

But it was prepared by an attorney in my office, taken from documents that Mr. Barron has not seen.

And it is simply due to a question that was asked that the word "writer" on Fox alone, and if you will look at the exhibit, you will see on Fox alone, you will see that the name appears before it.

And the reason is because they asked for hyphenates,

meaning are they members of the Writers Guild as opposed to doing something else?

MR. HACKLER: Some of these are not members.

MR. KEATON: That is what it turned out to be.

JUDGE: Well, I see no reason for going off the record.

MR. KEATON: All right.

JUDGE: Does the witness havethe document before him?

THE WITNESS: No, I haven't.

JUDGE: Mr. Goldman, do you want to repeat the question, please?

MR. GOLDMAN: Yes. Well, could I have the question read?

(Question read.)

Q (By Mr. Goldman) As I understand it, you do have categories of employment of straight out producers?

A Absolutely.

Q All right. And directors?

A Absolutely.

Q You also, do you not, have employment categories of writer/directors?

A Yes.

Q Or writer/director?

A We employ people who are capable of performing in more than one category.

Q All right.

Now, not every director is also a writer/director?

A Absolutely not.

Q All right.

Not every producer is a writer/producer?

A Right.

Q And not every producer is also a director and not every director is a producer or a writer?

A That is true.

Q So some people can function in all three? For example,--

A Stewart Rosenberg.

Q Ernest Lehman, writer/producer/director?

A Yes.

Q And some people when they function in all three, don't function in all three on one specific project, but might be a writer on one project and a director on the next, and a producer on another.

Is that correct.

A Yes.

Q All right.

Now, the creativity of these individuals that we are dealing with, from their employment at Twentieth Century-Fox, they might be called to direct a particular portion of a particular program one week, and then writer a particular portion of a different program the next week.

Is that correct?

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A May I have that again?

Q With these creative talents that you have at Twentieth Century-Fox, will you get it to a writer/director, he might be employed in the capacity of a writer one week for a particular program, and then the next week on an altogether different program, he might be employed as a writer.

Is that correct?

A Theoretically, it is possible --

Q Isn't that correct?

A Yes, it is possible. It rarely if ever happens quite that way, but it certainly is possible.

Q Or the reversal? One week a writer and the next week a director?

A Yes. That is also possible.

Q Now, I would like to get in the area of producer. Isn't it more so that you find writers being a "hyphenate" as it used in the area of producer as opposed to director?

A Well, the hyphenate is, you know, something that causes a lot of people trouble.

And all it really means is someone who can perform in two different capacities.

The most common hyphenate in our industry has nothing whatsoever to do with the writers. It is the actor/director, that is typified by Jerry Lewis or Gene Kelly.

It is the most common kind of hyphenated situation that

we find.

In television, however, because of the exigencies of the form of television, because of the fact that a number of different writers have to be employed in relation to one ongoing series, and because of the fact that all of the different writers have to write to a set of established standards, the character can't change from week to week.

His relationship cannot change from week to week.

He can't be dead this week and alive again the next week.

And particularly, on a new series that is not yet been on the air where you may have 9, 10 or 12 episodes being written before anyone has seen it, perhaps being written by as many as seven or eight different writers, someone at the top has to be the unifying force; has to have the ability to take a script that is turned in two days before production and himself change it so it conforms to the overall concept of the show, so that it is consistent both from the creative standpoint and from a story standpoint.

And because of that, because of the pure confinement of the way in which television episodes are made, writers frequently find that they have been able because of their ability to show abilities over and above and beyond those of a writer -- they find that they have been elevated to the producer function in television.

So that in relation to television, you find more than infrequently the writer becomes a producer, as well.

Q All right.

And what he is doing as a producer in television, as you have just described, is taking the finished product that another writer has given to him under a term contract and he is changing it to fit the outline as set forth by the production company.

Like for example, the 12 episodes that were written before one is aired?

A Yes. They are not really finished products when they come from the writers. They are not finished until they have been polished by the producer.

Q Or polished by a writer?

A Well -- but that function is the producer's function at that point. That is not the writer's function.

Q All right.

Now, with respect to -- I believe you must have been in the room when Mr. Mittleman was here concerning term contracts and loan-outs, would youhave in your information whether or not any of these individuals on General Counsel's 3, which is marked for identification General Counsel's 3 -- whether or not any of those individuals were on a loan-out status, or whether they had a direct employment status with your -- employment contract with your company?

Q All right.

I just want to get something straight for the record. I thought earlier in the testimony Mr. Barron, you stated that the term "executive story -- I think Mr. Mittleman testified that there was a story editor and an executive story editor, and I believe you stated that you don't use that terminology --

A Yes. He is an executive story consultant.

Q Executive story consultant?

A Yes.

Q And what is the other one?

A That is the only one we use in that category.

Q All right.

Does the executive -- with your familiarity with the industry, does the executive story consultant -- is he the same as the story editor and the executive story editor?

A That is correct.

Q They perform the same function?

A They perform the very same function.

Q And what does a story analyst do?

A A story analyst is in the IATSE. That is someone who reads and evaluates stories.

And that is totally outside the context of what we are talking about.

You are referring to Ronda Whitman, who had been on here?

Q Yes.

MR. GOLDMAN: I have no other questions.

MR. LE VINE: I have no further questions.

JUDGE: Mr. Keaton?

MR. KEATON: I have one.

REDIRECT EXAMINATION

Q (By Mr. Keaton) Mr. Barron, does your company draw any distinction in terms of the authority given and the treatment given, and the relationship with executives such as associate producers, producers and directors, based upon whether or not they are on loan to you, or on your own actual payroll?

A None whatsoever.

MR. KEATON: That's all.

JUDGE: Mr. Fisher?

MR. FISHER: One second.

Q (By Mr. Fisher) Mr. Barron, you testified that producers perform at various times writing functions, as for example, polishing and so on, when they do so, are they acting as producers or as writers?

A They are acting as producers. That is part of the producer's function.

Q All right.

And would you explain that answer a little bit? Is there anything more to say about it?

A Well, there really is not any more to say about it.

One of the requirements of being a producer and one of the elements involved in performing the producer's job is to make those kinds of changes that we describe traditionally in our industry as "A through H up to a polish," which is the terminology, I guess, that comes out of the 1970 Writers Guild Agreement.

Q So called incidental writing services?

A Incidental writing services, which have been carved out and which have been identified as the province of the production executive group.

Q Which would include?

A The executive producer, the producer, the associate producer, the director and story editor.

And one of the requirements of being a producer and one of the capabilities that the producer must fulfill is to take the creative material that has been delivered to him by the writer, and alter it in such a way to the extent that he is permitted to to make it more acceptable.

Q All right.

And then you earlier testified that many of your producers and directors are not Guild members, to your knowledge?

A A great many of them are not.

Q Are these same functions performed by them?

A Absolutely.

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MR. FISHER: That's all I have.

JUDGE: I would like to ask you a question, and I hope it is simple.

The person that you have identified as being on loan, they -- I understand, is it true that they perform the function for your company that you had previously described; that is, a person on this list who may be identified as a producer, may be on loan to your company, and he performs the function of a producer that you described earlier?

THE WITNESS: Absolutely.

JUDGE: All right.

And the same would be true with these other categories named; is that correct?

THE WITNESS: They perform exactly the same way.

JUDGE: Well, I had assumed that, but I wanted to make sure.

Mr. Goldman, anything further?

MR. GOLDMAN: Yes.

RECROSS-EXAMINATION

Q (By Mr. Goldman) I have one question. The A through H exemptions, so to speak, which are set forth in the 1970 Basic Agreement, of the Writers Guild, that sets forth certain writing functions which the Guild is giving up and allowing certain executives in the capacity of director or producer, executive producer and associate producer, to

producer/writer mean?

A It means that he has been hired to perform two functions: to perform writing and to be a producer.

Q All right.

A That same person could have been hired just to do one or the other, in which case he would be identified as either a writer or a producer.

Q And in those instances where you have hired a man as a producer/writer or writer/producer, whichever, when he is serving as a producer, does he at that time sometimes also perform functions as a writer?

A Yes.

Q Under the Writers Guild definition of writer?

A Yes, he does.

Q He does?

A Yes.

Q All right.

And conversely, he might be acting as a -- I withdraw the question.

That's all I have.

JUDGE: Have you finished, Mr. Keaton?

MR. KEATON: Yes.

JUDGE: Mr. Fisher?

MR. FISHER: That's the question I wanted to ask.

JUDGE: Mr. Goldman?

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

Mr. Goldman, it is my understanding from you that Mr. Hackler is somewhat under the weather this morning, and that we may proceed in his absence?

MR. GOLDMAN: Yes, that is correct.

JUDGE: All right.

Are you ready to proceed, Mr. Levine?

MR. LE VINE: Yes, sir.

We will call Sid Sheinberg.

Whereupon,

SID SHEINBERG

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

Q (By Mr. LeVine) Please state your name for the record.

A Sid Sheinberg.

Q What is your address?

A My home address?

Q Yes.

A 627 North Elm Drive, Beverly Hills.

Q All right.

And where are you employed?

A I am employed at Universal City, California by MCA, Inc.

And over a period of years, my participation went from a business affairs and legal participation to one involving new program development, program production supervision, and then complete responsibility for our production activities as vice-president in charge of television productions.

And then I went to president of Universal Television. In recent years my activities began to encompass management responsibilities for certain feature motion picture projects also.

Is this a complete answer?

Q Are you familiar with the term "Prime Time"?

A Yes, sir.

Q And could you define what Prime Time is?

A Prime Time --

Q In the television industry?

A Prime Time is a phrase which has historically denoted that period of the evening when the largest numbers of television sets are being used in the country.

That period of time over the years has undergone what I would describe as some slight modification in terms of exactly when it starts.

But I think it would be generally conceded that it is that period of time that starts somewhere between -- somewhere around 7:30 and ends at 11:00, and possibly it starts

earlier on Sundays.

Q All right.

How many hours of prime time are there generally available in the industry?

Is there a common figure that is generally denoted as prime time?

A At this time due to the application of the so-called prime time access rule, there might be some ambiguity in the sense that the networks program prime time from 8:00 to 11:00 during the week, and program prime time either from 7:30 to 10:30, or from 8:00 to 11:00 even on Sunday.

So the number of hours of prime time would be the sum of those hours.

Q All right.

Is there a common figure that is used in the industry as prime time for the entire week?

A I imagine that you would say it is 63 hours.

Q All right.

Now, of those 63 hours, how many of those hours are taken up by programs produced by Universal Television?

MR. GOLDMAN: Your Honor, I have to object to this line of questioning.

I don't really see what the relevancy is.

JUDGE: Mr. LaVine?

MR. LE VINE: The relevancy, your Honor, is that we

are just attempting to show that Universal Television produces a very large amount of prime time television series.

MR. GOLDMAN: Your Honor, we have -- I don't see where that is framed by any issues of the complaint.

We have stipulated to --

JUDGE: Well, Mr. Goldman, let's not take too much time on it.

At this point in the testimony, Mr. LeVine is apparently trying to establish the weight to be given to this witness's testimony, presumably with respect to any events effecting his organization that he might testify about.

It is preliminary; I will overrule the objection.

Q (By Mr. LeVine) All right.

Could you answer the question, please?

A At this present time, Universal Television produces or is part of a production entity which produces approximately 13½ hours of national network work prime time television.

Q All right.

And, to your knowledge, does any other studio produce that many hours of prime time television?

A No, it does not.

Q As part of your background are you familiar with the duties of the various personnel who are involved in the production of television films and series at Universal?

A Yes.

than Mr. Mittleman testified with respect to the creative functions of writers.

I --

JUDGE: Let me put it this way: if you considered that the two men gave varying or inconsistent testimony, then that is going to have some bearing on what I am asking you.

And I assume General Counsel does not concede that point?

MR. LE VINE: No, we don't, your Honor.

JUDGE: Under the circumstances, and with your view of the testimony, Mr. Goldman, can you give me an answer to my question as to whether or not this gentleman -- it can be stipulated that he would testify in accordance with the testimony of the two previous witnesses?

MR. GOLDMAN: I cannot stipulate to that.

JUDGE: All right.

Proceed, Mr. LeVine.

MR. LE VINE: Would you please read the last question?

(Question read.)

Q (By Mr. LeVine) All right.

Could you tell me what the duties of the producer function are?

And that would be executive producer, producer and associate producer.

A Yes. I would say that the duties of the producer function

in the television business includes the responsibility for the supervision of the development of the literary material to be the basis of the television film or tape, the selection of the person who will write, and if necessary rewrite, the literary material.

It will include the supervision, including the selection of the director of the proposed film or tape. Generally speaking, the supervision of the entire process of pre-production and production and post-production of the product, to use that word, and to include film and tape that is being made.

It would also include participation either alone or with others in the relationships with customers who buy the product, responsibility for the cost of the product, and I would say that the production function is generally the complete responsibility from beginning, or very near beginning, through the end of the development production and completion, and including participation in the sales of the product.

Q All right.

And would the producer function participate in the hiring process of various personnel who are involved in the production of the film?

A Yes, they would.

Q All right.

And could you tell me in what manner?

A Well, the recommendations and decisions with regard to all or substantially all so-called above-the-line personnel and participation, and the selection or approval of many key below-the-line personnel would be all encompassed within the producer's responsibilities and function.

Q All right.

And could you describe what "above-the-line" and "below-the-line" means?

A Yes. The term above-the-line -- the terms above-the-line and below-the-line refer to where certain functions appear on a -- have historically appeared on a formal budget which has been used historically in the motion picture industry; and typically, the producers, the directors, the writers, the right conveyers, these personnel and the cost of these elements in personnel typically appear above ta double line or -- on this budget, hence the phrase "above-the-line."

Q All right.

Are talent personnel above the line?

A I didn't mention talent personnel? I should have. The cast -- I use the term, and I think that is what you mean -- the term cast, of course, is above the line.

Sometimes there are other personnel that are sometimes above the line and sometimes not. Musicians, for example, --

I believe some companies treat them as above-the-line personnel and some companies treat them as below-the-line personnel.

Of course, everyone else connected with the production of a motion picture or television series who doesn't appear above the line, would appear below the line.

Q All right.

And does the producer function have responsibility in dealing with employees as they work on the production?

A The producer function does have responsibility in dealing with employees as they work on the production.

Q All right.

And what responsibility would that be?

A Well, as I stated earlier, it would be the responsibility involved in the decision-making process as to who they should be, the decision -- the supervising of their performance, the coming to grips with the inevitable grievances that are involved in the television and motion picture business.

And it would be making decisions when employees should be terminated, making decisions, or in any event, recommendations, which in some cases would require approval, as to increasing salaries that are paid to such employees.

A very, very large -- since the business with which we are connected with, involves such element of personal services, a fortiori, when one says that the function is

responsible for the product, one is intimately going to be involved in responsibility of dealing with the people who are rendering the personal services.

Q All right.

You mentioned that they deal with grievances and problems that arise among the personal, can you give us any examples that you personally know of of grievances that have arisen or that do arise from your personal knowledge?

A The grievances that arise can range from a feeling that a given actor or actress doesn't like her wardrobe -- and a case comes to mind involving the series "MacMillan and Wife," or her hairdresser or her dressing room, to the most serious grievance involving dissatisfaction with a script, or with the work of a director, or proposed director, or with the finished product and its cut.

It could be involved with one's salary.

Merely, I would say with any grievance which would come to the imagination of anyone in the room, will at some time become the subject of a producer's dealing with someone.

Q All right.

And is it his responsibility to attempt to resolve the problem?

A It is his responsibility to attempt to resolve the problem.

Q All right.

And does he have the primary responsibility to attempt to resolve the problem?

A When you say "he" --

Q The producer function?

A -- these problems arise with associate producers, who they try to get the problem resolved in some instance, or with the producer; and it is the responsibility with this entire group to try to get the problem resolved.

And absent crisis proportions their responsibility is total responsibility.

Q All right.

Can you tell me what the difference between executive producer, producer and associate producer function would be?

A I can tell you the difference, but with the permission I would not want to try to convey the impression that every relationship of executive producer, producer and associate producer is identical.

Q Generally, in your experience what is the difference?

A Well, in the most simple terms, generally the executive producer would be the boss of the producer, and the producer the boss of the associate producer.

The responsibility of executive producer -- the responsibility of the executive producer might include, and frequently do include, responsibility over more than one project or series.

For example, David Victor is presently responsible for three television series, so it may become important for him to deal with three producers.

The analogy which come -- might come to mind is: if one viewed the production of a television series as a business, I would say that as a general proposition the executive producer might be analogized to the president of the Operating Division; to wit, the series, and the producer and associate producer might be analogized to his executive vice-president and vice-president.

There again the relationships among the parties might differ in many instances, deperding upon who the parties are and their own skills, their own interests.

There may be one executive producer who does not like to participate in dubbing for example, which is the post-production process where music and sound are mixed and prepared for inclusion in the finished picture.

In that particular instance, one might find that the producer will supervise this function or that the associate producer will supervise this function.

There may be an instance where the executive producer doesn't like to approve the set, for example, and his function may be divided amongst the producing personnel so that responsibility is delegated, as it were, to the associate producer or the producer.

It must be viewed as an assemblage of functions with generally descending responsibility among the persons.

And within that area of assemblage of supervisorial functions, some element of discrimination and separation is based upon the skills of the -- the skills and desires of the people participating in that function.

Q Could you tell me what the function of the director is? What are his duties and responsibilities?

A Well, the function of the director is to direct the picture of the program.

It essentially is the function of -- it is a function of participation in the process of the filming, and frequently and generally, not commencing until there is a script in some form or other, the participation in supervision in collaboration with the producers, and sometimes of the preparation of the budget.

It also includes the selection of the types of sets that are going to be used, the performers that will be cast, and a direct participation in the post-production processes of the film, and an overall and complete and very direct supervision of the filming.

He has been referred to as "God on the set."

Q All right.

Does he recommend the hiring of any of the people who participate in the actual filming of the production?

A Do you mean to restrict that question to the cast or broader?

Q To any of thepeople who are involved in that.

A Yes. I would say that generally speaking, -- and there again I don't believe that anything that here said will apply to all directors in connection with all projects, and their relationships with all producers at all times, and do not want to convey that impression -- but generally speaking, he would participate in the selection of the cast and "participate" may be even a weak word -- make strong recommendations for approval of the producers as to who the cast would be.

And he would participate in revisions of the script, including recommendations as to writers to do rewrite in many cases.

It is fair to say that he would participate and be involved in the actual filming or the supervision of the filming completely in a most collaborative manner with the producers of the picture.

Q All right.

And do problems arise in the area of the filming?

A Yes. Problems do arise in filming.

Q All right.

And whose responsibility is it to resolve the problems with employees during the filming?

A Certainly a problem that arises during -- when you say "filming," may I interpret that as meaning at least in the case of film -- principal photography in this instance?

Q With respect to the director's function?

A Yes.

Generally speaking, the director would have the responsibility for adjusting those kind of problems that would arise in the filming -- in the photography of the film.

Problems such as between self and the cameraman or between himself and the performers who have been engaged, or with the performers with each other.

And in some cases it is between the performers and the material, or the writer, who may also be sitting there.

Q All right.

Could you tell me what the story editor function or executive story editor function would be at Universal?

A Yes. The story editor function -- and the phrase unfortunately today in the industry has a number of substantially identical phrases which mean the same thing, ranging from story consultant to executive story consultant and various other titles dependent upon vanity, negotiations and whatever -- and this function generally would mean the function of dealing with the preparation of literary material by the writers, directing and controlling the work of the writers, suggesting directions and modifications in their

work, recommending the termination of the engagement ofthe writers.

We would conceive of them as production executives in the generic sense whose primary responsibility is the preparation of the material.

MR. LE VINE: That's all the questions I have of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: Mr. Miller will examine the witness for the Association.

Q (By Mr. Miller) Mr. Sheinberg, how long have you been president of Universal Television?

A I believe I have been president for somewhere between four and five years.

Q All right.

You mentioned an executive producer named David Victor. Is he executive -- what program is he executive, or what series?

A Mr. Victor is the executive producer of "Marcus Welby, MD, Owen Marshall, Counsellor At Law," and a new series to premiere in the fall, hopefully, called "Griff," as well as a number of individual films, including the Pope John Special, which was on ABC this past year, and a pilot film, which was made in association with the Office of the Attorney General of the State of California.

Approximately how many hours of prime time and non-prime time would your company be involved in in the production of it?

MR. KEATON: Well, I object to that question as being compound, because if you don't talk networks, there are probably about 50 different markets in the United States alone.

He can't answer that question except in the context of a particular market.

JUDGE: Well, the witness can -- I will take his answer with respect to his best knowledge of the situation.

THE WITNESS: Well, I testified earlier that we produce on a regular basis, at the moment, 13½ hours of network prime time television.

In addition to this network prime time we are also presently producing a half-hour childrens' program not scheduled for prime time.

We have produced a number of post-prime time programs within the last year.

And we are presently committed to producing a number of post-prime time programs -- not a large number, but a number -- and we are also at the moment concluded negotiations to provide a number of afternoon programs.

We are not presently engaged in the business of producing programs in the United States for non-prime time other than that, and other than in the instances of so-called motion

pictures for television, which we do produce with some frequency.

Q All right.

Mr. Sheinberg, are all producers, executive producers and associate producers, required by your company to perform writing functions?

A No.

Q Are some producers, executive producers and associate producers required to perform writing functions?

A Sometimes.

Q All right.

When a producer, executive producer and associate producer is required to perform a writing function, did he have to come under the Writers Guild Basic Agreement for 1970?

MR. KEATON: Objection.

It is asking for a legal conclusion. The Writers Guild contract speaks for itself.

Furthermore, it is also immaterial.

MR. GOLDMAN: I will withdraw that question.

Q (By Mr. Goldman) All right.

Are you familiar with personal service contracts of executive producers, producers and associate producers?

A The actual contracts -- the legal documents?

Q No. Not the actual ones, but the basic contents of the

documents?

A In a general way.

Let me amplify my answer. I would say I have a general familiarity with the "deals" as distinguished from the specific familiarity with the "deals" or the contracts.

Q All right.

If a producer, executive producer, or associate producer is required to perform a writing function, to your knowledge, do you know if that producer, executive producer, or associate producer is required to have a personal service contract setting forth the fee to be paid for his writing services separate and apart from his other services?

MR. LE VINE: Your Honor, I would object to that question as going beyond the scope of direct with this witness.

JUDGE: Mr. LeVine, that is not an objection that I normally sustain, since I believe every witness may be cross-examined as to any matter that is relevant or material to the issues in the case.

And --

MR. LE VINE: Your Honor, may I interject at this point?

The Respondent intends to call this witness as their own witness at a future time.

And we offer today to let them go through everything that they wanted with this witness while they had him on the

stand.

If they intend to call him as their own witness, let them reserve matters beyond the scope of direct for the time when they do call him.

JUDGE: Well, unless I am mistaken, Mr. LeVine, the only difference between -- in the situation is that you are asking me to require counsel to ask -- to interrogate the witness with non-leading and non-suggestive questions.

That is the only difference.

MR. LE VINE: I think I am asking him a little differently from that, your Honor.

What I am asking is that if they intend to go beyond the scope of direct and they intend to call him at a future time, then let them either call him now as a witness and exhaust the witness, or if they want to go beyond the scope of direct, take it when they call the witness as their own.

JUDGE: All right.

I am not going to get involved in these technicalities. With respect to the question that is presently being asked -- Mr. Goldman, I would like a little help from you as to --

MR. GOLDMAN: Certainly.

JUDGE: -- the significance of the question to the issues.

Now, I can see from what has gone on where you may be leading, but I think I need a little help at this point.

Q All right.

JUDGE: Let me make this very clear, if I can.

I read this same material for the first time, during the recess, and it leads me to say to you, that if you have any question at all, with respect to understanding the material in that contract or understanding the relationship of the question to the contract, I want you to tell me.

Do you understand?

THE WITNESS: Yes, I do..

JUDGE: All right.

Go ahead, Mr. Goldman.

Q (By Mr. Goldman) Yes. With respect to writing functions required of producers, executive producers and associate producers.--

A Who are professional writers?

Q Who are professional writers, and who are described in that collective bargaining agreement, when a producer, executive producer, or associate producer performs services described in that collective bargaining agreement, as writing services, is there a requirement for a separate paragraph in his personal service contract or a separate personal service contract covering those specific writing functions?

MR. KEATON: I am going to object again upon the grounds that the answer to the question is found in the document. The witness is being asked to state a legal conclusion.

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And --

JUDGE: Just a moment. I think the problem, Mr. Goldman, is in your use of the word "requirement."

MR. KEATON: That is exactly right.

JUDGE: It is required by whom and in what circumstances?

If required by the contract, then the objection is correct.

MR. GOLDMAN: I will leave out the word "requirement."

Q (By Mr. Goldman) All right.

I will ask you, is there normally a separate personal service contract covering those writing functions?

A Yes.

Q Well, as I understand it, Mr. Sheinberg, not all producers, executive producers or associate producers perform writing functions covered under that collective bargaining agreement; is that correct?

A That is right.

Q All right.

Now, those producers that do not perform writing functions under tthat collective bargaining agreement, in what respect is their function and duty as a producer different from the producer who performs writing functions under that collective bargaining agreement?

A In an instance when the latter producer is also writing,

or generally?

Q Generally.

A None.

Q When this producer is writing -- take your second category -- what is the difference in duties and functions and responsibilities?

A At the risk of a simplistic answer, when the producer is writing, he is performing writing services.

And he may or may not during the course of the performance -- I don't want to say during the course -- during the period of his performance of those writing services, also be performing services of a producing nature of a sort identical to those that might be performed by someone who is not a writer, or not rendering writing services, or he may not, depending upon his work habits, the exigencies of the moment, and a variety of other factors.

In the simplest sense, he might either be at home at a typewriter doing nothing but writing during that period of time, or he might be at the studio or at home producing the series and intermittently writing also in the performance of the so-called writing services to which the second group of persons -- I'm beginning to not even to understand myself -- he is performing writing services.

And he might even be writing concurrently with the producing or he might not be writing concurrently with the

doing his writing function, and that there are times when --

A I did not say that.

Q Well, is that not true?

A No. It would only be true if he -- it is a truism. If he is performing -- if he is writing, he is in fact, writing.

MR. KEATON: Your Honor, I would like to renew my objection.

I think we have had enough of this to show how irrelevant and immaterial this is.

JUDGE: No. I'm going to overrule that.

There is a distinction that will have to emerge on that point.

Q (By Mr. Goldman) The writer/producer, when he is involved in a production -- the one through five steps, and is actually involved in the writing function of that production, he cannot do both at once; -- is that correct?

A No --

Q He cannot do both the writing function and the producing function at the same time?

A That is not correct.

Q That is not correct? He can do both?

A Some can, yes.

Q Some can?

A Some can and some can't.

Q He can do the producing function and the writing function at the same time?

A Yes.

I would offer an analogy to drafting a contract and trying a lawsuit.

Q Yes. But you can't be drafting the contract while you are trying the lawsuit.

You do it after or in between or at breaks in the lawsuit; is that what you are trying to analogize into?

A No. It is my opinion that if a lawsuit were to go on for a period of 12 weeks.

Let's say that that is the period of time that might be involved in the production of an episode of a television series.

That during that period of 12 weeks a producer who also has within his bag of tricks, as it were, the ability to write, and as a writer, that he might within that period of 12 weeks, also render writing services.

He might write a book, a screen play -- what I am suggesting is that similarly a lawyer who is in the process of trying a lawsuit, which takes a period of 12 week,s if he happens also to be a draftsman, might be able to write a contract.

Obviously, he couldn't do it in open court during the process of it, but he could do it intermittently.

And --

MR. GOLDMAN: Exactly.

THE WITNESS: -- or otherwise, he might be reading a magazine or something.

Q (By Mr. Goldman) All right.

So in other words, if I understand it correctly, that the writer/producer does the writing work also while he is doing the producing work, but not necessarily at the same time?

A No. Some people who are producing, and have within their skills, writing, might during the period of time, also do writing services.

Q For that production?

A Not necessarily for that production. As a matter of fact, obviously he cannot be writing for that production when the production is finished, for example, even though he would still be producing.

Q But he could be performing writing functions for that project or other projects?

A It is possible that he could be during the calendar period of time performing such services for that or another project.

Q All right.

Let's take a hypothetical -- a 12-week program schedule where the individual is a writer/producer.

JUDGE: That is rather simple for me. You have to make those arrangements with whomever is intending to call you.

You are excused; thank you very much.

(Witness excused.)

JUDGE: Call your next witness, Mr. LeVine.

MR. LE VINE: Yes. We will call David Victor to the stand, please.

Whereupon,

DAVID VICTOR

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name for the record.

A David Victor.

Q What is your address?

A 147 Groverton Place, Los Angeles 90024.

Q Where are you employed?

A Universal Studios.

Q All right.

And in what capacity are you employed?

A Executive producer.

Q And at what programs are you the executive producer?

A Marcus Welby, M.D., Owen Marshall, Counsellor At Law, and a new series called Griff, with Loren Green.

Q All right.

How long have you held the position of executive producer at Universal?

A Roughly five years.

Q All right.

And could you tell me how you are employed? Are you under personal services contract?

A No. I am the president of Groverton Productions, Ltd., which lends my services to Universal Studios.

Q All right.

Is Groverton Productions engaged in any activities at the present time other than loaning out your services?

A No, sir.

Q Could you tell me what your duties are as an executive producer?

A Well, I supervise the production of all the series that I am involved with.

And in addition to that, I have a series of specials called "Portrait."

And I'm also involved in movies of the week and also creating pilots for ABC.

Q All right.

And could you tell me specifically what you do as an

executive producer?

A Well, I supervise all the aspects of production, of course, several layers removed from day-to-day producing, because there are a number of shows that I oversee.

I hire producers. I hire directors. In a sense, through my associates, I hire and fire writers.

I also supervise the budgets. I also go down the set in case there is a crises and try to solve those.

Q All right.

You mentioned that you solve crises on the set. Could you describe the nature of the problems that arise that you personally would deal with?

A Well, if they show an episode is really in trouble and going far behind in its schedule and budget, I try to do something about that.

If there are temperamental problems between directors and cameramen, directors and personnel and directors and stars, directors and producers, I try to solve that as diplomatically as I can.

Sometimes I have to take some drastic steps removing one or the other; and not necessarily in the case of producers.

Most of the time they stay, but once in a while I have to solve problems of the nature that I have described.

Q All right.

Do problems ever arise between the producer of the show

and the actor which you will have to deal with?

A Oh, yes. I try to be the court of last resort; I try to stay out of the day-to-day problems and really move in when it becomes important that I do.

But there have been examples of that.

Q All right.

And could you describe the types of --

A Well, I wasn't in here before, but I think many times there are temperamental problems -- disagreements creatively between director and the cameraman, or one or the other threatens to walk off the set.

And that type of problem arises, and hopefully not too often, because I am a good producer and I try to keep them to a minimum.

Q All right.

And could you tell us some other types of problems that arise?

A Well, in some instances, I suppose my story editor may have a disagreement with a writer who is employed, and in some way I try to make peace there.

I try to solve that particular kind of problem.

Q All right.

Are you a member of the Writers Guild?

A Yes.

MR. LE VINE: Could we go off the record for a moment,

please, your Honor?

JUDGE: All right.

Off the record.

(Discussion off the record.)

JUDGE: On the record.

Proceed, Mr. LeVine.

MR. LE VINE: All right.

Q (By Mr. LeVine) It was agreed between Counsel for the General Counsel and Counsel for Respondent that David Victor, executive producer, was told by Allen Griffis on the telephone --

MR. KEATON: What date?

MR. LE VINE: I believe that it was on April 10th that it would be brought up on disciplinary charges, and the strike rules would indicate the extent of the discipline if he closed the picket line.

JUDGE: You are proposing that as a stipulation?

MR. LE VINE: Yes. It -- is that --

MR. GOLDMAN: Yes, I so stipulate.

JUDGE: Is that acceptable to both of the Charging Parties? Mr. Keaton?

MR. KEATON: Yes, your Honor.

JUDGE: Mr. Fisher?

MR. FISHER: Yes, sir.

JUDGE: All right.

and tax counsellor have arranged for all of that.

Q All right.

Does Groverton Productions, Ltd., hire any other people?

A No. I'm the only one.

Q Are you a member of the Writers Guild of America?

A Yes.

Q How long have you been a member?

A I have been a member for close to 25 years.

Q In fact, you were on the Board -- executive Board of the Writers Guild?

A I served on the council of the Writers Guild.

Q On the council?

A On the Board of Directors of the council.

Q All right.

And for how many years?

A I don't remember exactly. It must have been a couple of years -- two -- two and a half years -- one term.

Q And you as an executive producer -- do you engage in any writing functions?

A No.

Q Are you in the process of creating pilots for ABC?

A No. The only creative writing I have done in my 14 years as a producer and executive producer -- I have never written a teleplay -- I was responsible one way or another

for six story credits during the 14 years.

And two of them eventuated in creating credit for Marcus Welby, M.D. and Owen Marshall.

That is the only writing I have done in 14 years.

Q All right.

And when you create pilots for ABC, you don't do any writing?

A I supervise, unless as I say, when I create it, it goes through all the steps.

I write out a format of the characters and send a copy of it to the Writers Guild.

Then it is up to them whether I get separation of rights.

Q All right.

In 14 years as a producer, have you polished any scripts?

A A minimal amount as I understand I am about to do under Section A through H.

I have not written any single scenes or any pages of any kind.

Q Is it your testimony that you have only done A through H writing?

A That is right.

Q As set forth in the contract?

A Except for the few story lines that I have explained, in which I received credit on the screen.

Q When you are doing the creation of the pilots for ABC, you are doing the A through H categories?

A I work with other writers in the creation of the pilot; I supervise their writing.

Q All right.

You don't perform any writing?

A Unless, as I say, I become a co-creator or a creator, in which case, it goes through all the steps of my writing out a format, a list of characters in the original story, which goes to the Writers Guild.

Q With respect to movies of the week for NBC, do you perform any writing functions?

A I supervise the writers.

Q Supervise the writers?

A Supervise the writers in the capacity of A through H, nothing else.

Q And with respect to Griff, which will be starring Loren Green, have you written any scripts for that?

A No, sir.

Q All right.

Are youpresently doing A through H writing functions for Griff?

A There are no Griff scripts.

Q All right.

Now, are you doing A through H writing on either Marcus

Welby or Owen Marshall?

A We have no scripts yet on Owen Marshall, and the only work we are doing on Marcu Welby is that there are half a dozen scripts left over from the previous four years.

We have been in production for four years.

And with those I only do supervisory A through H work.

MR. GOLDMAN: May I have his affidavit, please?

MR. LE VINE: Yes.

MR. GOLDMAN: May I have a couple of minutes to read this?

JUDGE: Suppose I give you until 12:00 noon; is that enough time?

MR. GOLDMAN: Fine.

JUDGE: All right.

We will be in recess until 12:00 noon.

(Short recess.)

JUDGE: On the record.

Q (By Mr. Goldman) All right.

Mr. Victor, you are loaned out by Groverton Productions, Ltd. pursuant to a contract between Groverton Productions, Ltd. and Universal City Studios, Inc.?

A That is right.

Q Asking that you perform certain services?

A That is right.

Q All right.

Now, what is the nature of the services that you are compensated in that agreement between Universal City Studios, Inc., and Groverton Productions, Ltd.?

A In the years that I have been with Universal, these are only producing or executive producing functions.

Q Is there any agreement between Groverton -- I believe you speak on behalf of Groverton?

A Yes.

Q All right.

Now, between Groverton Productions, Ltd. and Universal City Studios, Inc., which includes in any respect a writing function?

A I believe -- and I don't remember the exact details -- that there was a writer/producer contract which provides that I probably could supply writing services.

I have not.

Q It's not that you have not, Mr. Victor, but your contract, as I understand it, between Universal -- not your contract -- the contract between Universal City Studios, Inc., and Groverton Productions, Ltd., calls for a loan-out agreement for you in the capacity of a producer, as well as a writer.

Is that correct?

A I believe so, yes.

Q All right.

When your -- excuse me -- do you know if Groverton Productions, Ltd. has ever been a signatory to any agreement with the Writers Guild of America?

MR. LE VINE: Objection.

MR. KEATON: Irrelevant and immaterial, and beyond the scope of this case.

JUDGE: Briefly, Mr. Goldman?

MR. GOLDMAN: Well, I will withdraw that question.

Q (By Mr. Goldman) All right.

When you were paid for your services, you were paid by Groverton Productions, Ltd.?

A That is right.

Q Did you ever contract with Groverton Productions, Ltd.?

A I don't know if there is an official contract. I know that I am the only asset it has, and I am the president of the company.

I am the only man connected with it.

Q All right.

Now, how long have you been under this loan-out agreement with Universal through Groverton?

A I believe it is four years.

Q And in the four years that you were involved in this situation, did you ever perform any writing functions?

A Except in a supervisory capacity, A through H, none, except for the couple of incidents which I have told you about.

MR. GOLDMAN: Mr. Victor was 45 minutes.

JUDGE: Hopefully, it will be shorter.

Call him.

MR. LE VINE: We will call John Epstein, please.

Whereupon,

JOHN EPSTEIN

Was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name for the record?

A John Epstein.

Q What is your address?

A 1988 Coldwater Canyon Drive, Beverly Hills, California.

Q Could you speak a little bit slower?

A All right.

Q By whom are you employed?

A Universal Studios.

Q All right.

And in what capacity are you employed?

A Producer.

Q Of what program are you the producer?

A Owen Marshall, Counsellor at Law.

Q All right.

And how long have you held this position?

A Just over two years.

Q Could you tell me what your duties are as producer for the Owen Marshall series?

A I supervise all aspects of the making of the series directly under the executive producer, Mr.Victor.

I am involved in the day-to-day activities of all aspects of the making of the series from the conception of the premise, the story script, the casting, the shooting, the supervising of the sets, locations, post-production film editing, scoring, ultimate release, etcetera.

In other words, in every aspect of the show.

Q All right.

And do you recommend the hiring of any persons involved with the production of the film?

A Yes.

Q And could you tell me how that comes about and who you would recommend?

A In various areas I am involved in -- in almost mostly involved in the hiring of writers, the hiring of directors, the choice made in the hiring of the actors; and in some aspects, I am involved in the elements of the production crew.

Some of that is done by the Production Department at

Universal, and some of it is done in concert with the producer.

Q All right.

Do you recommend the hiring of writers?

A Yes.

Q All right.

In the course of your duties as a producer, do grievances or problems arise in the production of the films?

A Yes.

Q Could you tell me the types of grievances that arise that come to your attention?

A There have been some earlier references to the kind of things I get involved with when Mr. Victor described certain aspects of his supervisorial areas.

Mine are more on a day-to-day basis. And I try to keep them from the executives and handle them myself.

When they get out of hand, they go higher.

They can be as basic as director problems with elements of the crew, as happened on Owen Marshall last season when we had two directors who were unable really to work with members of the camera department.

We have had occasion where actors are unhappy with scenes, or unhappy with their lack of scenes; sometimes an assistant director is unhappy because they can't reach actors because actors don't have telephones.

And also, the constant problem areas of making a film.

Q All right.

And could you give me some examples of the type of specific problems that arise with respect to actors?

A Well, I think I just did. In one case, we have an actor who changes his phone number, and the assistant director was not advised.

And the assistant director tried to call him for an 8:00 call on a given morning and couldn't find him.

So what do you do when you can't find him after? You call the producer.

And I tried to settle that problem for future, and not only to find the actor, but to make sure that he indeed had an exchange, which most actors have in this town, and that kind of thing.

We have -- one of our lead actors was unhappy with the amount of -- the percentage, let's say, of scenes he had in certain given episodes.

I spent a great deal of time dealing with that -- dealing with him, placating and explaining, and relating to that problem.

Q All right.

And do grievances ever arise with, say stunt men?

A Sometimes. They can arise with anybody. Our series is conceived so there is very little stunt work.

I have been involved in the other kinds of series, not at Universal, and grievances are constantly arising with stunt men.

And the production manager is supposed to deal with that -- with the stunt men.

And when he is unable to, he will ask our producer.

MR. GOLDMAN: Excuse me, your Honor.

I am going to have to object to the answer as being non-responsive to the question.

Number one, we are bringing in the aspect of the production manager, which I believe is in a different union altogether.

He is not even affiliated with the producer, assistant producer or executive producer.

And the answer doesn't relate to Owen Marshall as it was asked.

THE WITNESS: The question was --

JUDGE: Just a minute.

THE WITNESS: I am sorry.

JUDGE: Well, the auestion basically, as I remember it, or understood it, had to do with the function of the producer.

And I think the witness stated, if I am correct, Mr. Goldman, that if the production manager could not handle the grievance, that he next took it to the witness as a

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producer.

And that would be the -- this seems to me to be relevant.

MR. GOLDMAN: Well, you must look to what he said I think, sir, in the fact that he has been the producer here on this program for approximately two years.

He is talking about other employment elsewhere.

JUDGE: I'm going to overrule the objection.

The status of the producer generally in the industry as well as this particular dproducer, is a matter I am going to have to deal with.

It may be a matter of weight.

If it is a long time ago and in a different situation, then I might not give it any weight.

Go ahead, Mr. LeVine.

MR. LE VINE: I believe he answered the question.

Q (By Mr. LeVine) Do grievances ever arise with respect to writers, with respect to the determination of credits?

A On occasion.

Q And who makes the initial determination of credits?

A I believe -- I don't recall a specific case of this in the last season, but I believe in a case like that, we put a name on the script that we, as a unit, feel is the name that belongs on this script, and that it goes to the Writers Guild.

And then the Writers Guild mediates it just as a normal procedure.

I believe that is the way it works; I can't vouch for that.

Q All right.

And could you tell me who the unit is that you have referred to?

A The unit is usually myself, the story consultant and conceivably the executive producer.

Q All right.

MR. LE VINE: Will you please mark this as General Counsel's next in order?

(The document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q (By Mr. LeVine) All right.

Mr. Epstein, did you receive any communications from the Writers' Guild of America on or about April 14th, 1973?

A I am not great at the date, but yes, I am sure it was in that general area that I did, yes.

Q All right.

I will show you this document which has been marked as General Counsel Exhibit 5 for identification and ask you if you received a copy of that document.

A Yes.

that either a hearing has been or will be scheduled on these charges?

MR. GOLDMAN: Yes.

JUDGE: All right.

Is that satisfactory to you?

MR. LE VINE: Yes, it is your Honor.

JUDGE: To the Charging Party?

MR. GOLDMAN: If the General Counsel and Charging Parties -- since the Charging Parties are probably representing to me -- if they will indicate to me that he is being held for trial this afternoon, I will so stipulate.

MR. MILLER: Yes. It is my understanding that Mr. Epstein's trial which is originally scheduled for Monday afternoon, May 21st, has been put over until this afternoon.

MR. GOLDMAN: I will stipulate to that.

Are you representing him?

MR. MILLER: Yes.

MR. GOLDMAN: I might add, your Honor, that -- I will offer the stipulation, that pursuant to my discussion with Mr. Miller, that he has indicated to me that Mr. Epstein will stand trial this afternoon, the 24th of May, 1973 for violation of the strike rules as set forth in General Counsel Exhibit No. 5.

MR. MILLER: So stipulated.

JUDGE: Mr. Fisher?

MR. FISHER: So stipulated.

JUDGE: Mr. LeVine?

MR. LE VINE: So stipulated.

JUDGE: All right.

That stipulation is received. Is there anything further?

MR. LE VINE: That's all the questions I have of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: Mr. Miller.

Q (By Mr. Miller) Mr. Epstein, how long have you been a member of the Writers Guild?

A Around 15 years.

Q All right.

And when was the last time that you received a writing credit?

Do you recall?

A 1963.

Q All right.

And are the -- are there various classifications of membership within the Writers Guild?

A I can't speak for the classifications. I know that I am not a full voting member.

I am referred to as an associate member.

Q All right.

And as an associate member, do you have voting rights?

A No.

Q As an associate member, were you allowed to vote on the adoption of the strike rules for which you are being tried?

A It is my understanding I have no voting rights.

MR. GOLDMAN: I'm sorry. That is not responsive to the question.

JUDGE: It is -- I think it is responsive, although not specific.

The question was whether or not you voted on the adoption of the strike rules --

MR. KEATON: Excuse me. Not on whether he voted, but whether he was allowed to vote.

MR. GOLDMAN: I don't think that was the question.

JUDGE: The question, as I am putting it to the witness, is whether he voted on the adoption of the strike rules.

THE WITNESS: I did not, your Honor.

JUDGE: All right.

Mr. Miller, do you have a question?

MR. MILLER: Yes.

Q (By Mr. Miller) Is it your understanding that you would have been allowed to vote on the strike rules?

A It is my understanding that I would not have been allowed to vote on strike rules.

Q All right.

MR. GOLDMAN: May we take about a two-minute break?

JUDGE: I'm going to give you five minutes.

We will resume at 20 minutes to 1:00.

(Short recess taken.)

JUDGE: On the record.

Mr. Goldman, you can proceed.

MR. GOLDMAN: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Goldman) All right.

Now, Mr. Epstein, number one, I take it from your direct testimony, that Universal has a Production Department?

A That is correct.

Q What does that Production Department consist of?

A Well, it consists of many people who do -- who function in various capacities.

Q Well, let's tell me the capacity of the people.

A I am not equipped to give you an absolutely accurate rundown on it, but I can give you a general one.

Q Fine.

A Basically, it consists of department heads, production managers and -- unit managers, as they are referred to -- and assistant directors, and the like, I believe also, come under the control of the Production Department.

Q Producers, executive producers?

A No.

Q Associate Producers?

A No.

Q All right.

Is this where the ideas originate in the blueprint, so to speak, for the program -- this is where they come from and start.

This is the initial conception stage?

A In the Production Department?

Q Yes.

A No. The Production Department is solely responsible for the physical operations and the making physically of the picture; the personnel involved in hauling lumber, prop men work under them, and that kind of thing.

It is a physical operation only; it is not creative in any way.

Q All right.

And when you are involved in a production, you work with that Production Department?

A Yes. In some regard.

Q All right.

Now, you testified on direct that when you were producer in the past, that you had been involved in the problem of stunt men?

A On occasion.

Q Could you give us how long ago that occurred?

A Yes.

I would say the bulk of it occurred around 1966-'67 when I was doing a series that was heavily involved with the stunts.

Q In which company were you doing it for?

A The Mirisch Company.

Q And that was "Rat Patrol," is that right?

A That is correct.

Q All right.

I have your affidavit before me, Mr. Epstein, and you stated that you are an associate member of the Writers Guild.

Is that correct?

A That is correct.

Q Do you pay dues?

A Yes.

Q Isn't it a fact in your affidavit, you pay dues voluntarily to the Association?

MR. KEATON: Objection.

Irrelevant and immaterial.

JUDGE: Overruled.

THE WITNESS: I pay dues. I don't know how voluntarily it is.

As a member of the Guild, it is part of what I am committed to do. I never questioned it.

Q Why do you maintain membership in the Writers Guild?

MR. KEATON: Objection, your Honor.

What does it have to do with this case?

JUDGE: What is the relevance?

MR. GOLDMAN: Well, the relevance is this, your Honor: part of our argument is that many of the people in this industry belong to many different guilds, unions, associations.

In fact, some people belong to as much or as many as seven.

They belong to the Writers Guild, the Directors Guild, the Producers Guild and the Screen Actors Guild --

JUDGE: Just a moment.

Hold it.

MR. GOLDMAN: Yes.

JUDGE: There was a question and an answer yesterday going to this point. I think the matter has been opened up.

The objection is overruled.

THE WITNESS: I believe the question was: why do I maintain membership in the Writers Guild?

Q (By Mr. LeVine) Yes.

A Well, I have many reasons as to why. I have stated in my affidavit, but I would be happy to enlarge on it or put it into the record --

JUDGE: Now, Mr. Epstein, you were asked "why."

THE WITNESS: All right.

I never knew I was able to get out. It was my impression that I was unable to get out, one, and secondly, I felt that there was a moral obligation that I Had, because when I did the little bit of writing that I did 10 and more years ago, I did write for scales that had been arrived at and fought for by the Writers Guild in previous years.

And I felt that I had that kind of a moral obligation to maintain and continue to pay dues to an organization that had indeed fought for those scales.

And in addition to that, I saw no reason to get out, because I wanted to keep my opportunity -- if I ever wanted to write again, to be able to write again.

I guess that answers it as far as I am concerned.

Q All right.

Now, I believe you said in your affidavit -- and correct me if I am wrong -- "I wish to keep my options open if I should eventually either create a series or perform other work within the Writers Guild jurisdiction?"

A I think that is a fair statement.

You have it in front of you and I don't; so --

Q So that you would receive the remuneration that the Writers Guild negotiates for.

Is that correct?

A In those areas, yes.

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Q All right.

And were you in attendance at the meeting of the Writers Guild when they voted on the strike rules?

A Yes. February?

Q Did you vote?

A No.

Q Did you attempt to vote, or did you just walk into the meeting and sit down?

A I did not vote.

Q All right.

Mr. Epstein, what does a story consultant do?

MR. LE VINE: Your Honor, I would object to that question.

I think it goes beyond the scope of the direct examination of this witness.

MR. GOLDMAN: Well --

JUDGE: The witness mentioned story consultant in his direct testimony.

MR. GOLDMAN: Not only that, your Honor, but we have his affidavit here, and --

JUDGE: Well, that may not be the answer. The reason I am overruling the objection is that it was opened up.

MR. GOLDMAN: Fine.

THE WITNESS: Story consultant works with writers, supervises the preparation of writing material, does rewrites

and polishes?

I can't speak for all, but I would assume that is generally a correct statement in all areas.

Q All right.

Now, in your affidavit I believe you stated that you when working with the executive story consultant, supervised his work -- his work with writers?

A That is correct.

Q So you in turn supervised the executive story consultant?

A That is correct.

Q All right.

What is the manner of supervision that you engage in? What do you do?

A Generally I meet with the story consultant before he meets with the writer.

We have an exchange of ideas. And obviously at various stages of the development of a piece of material, whether it be an outline or a draft of a screenplay, we have an exchange of ideas.

I tell him what I feel is wrong with the piece. And I tell him in general how I feel it should go, and be corrected etcetera.

And we have in essence, to use a general term, a meeting for 20 minutes, in which he then goes and translates

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into a meeting with the writer for two hours so that I am free to do other things.

If I am needed in the meeting, which is often the case, the story consultant calls me and asks me to participate in that dialogue.

Q All right.

Now, if I understand what takes place -- and correct me if I am wrong -- you have, as the producer, the initial blueprint, so to speak, of the -- now, we are talking about a series, are we not?

A In my case, yes.

Q You have the initial blueprint of the series.

And it is your function to make sure that there is a continuity in the series, and as was testified to earlier, that the star doesn't become dead in one episode and resurrected in another.

This is the type of information that you supply to the executive story consultant.

Is that correct?

A No. It is much more specific than that.

Q All right.

A It generally has to do with the dramatic values in the script, and the bad dialogue in my judgment, because ultimately the buck has to stop somewhere, and I judge the material.

And I deal with it for what it is and tell them what I think is wrong with it. And generally speaking, I make suggestions as to how to cure it.

Q To the executive story consultant?

A Yes.

Q Who, in turn, is delegated by you then to speak to the writers?

A That is correct.

Q All right.

Now, assuming you have a term writer who has handed in the script, and his term has expired -- he is cut and paid for the script -- and your story consultant now has it as a finished product?

How do you handle that problem, when there is a finding by you that the dialogue is bad?

A We have the same conversation -- or a similar conversation that I had with the story consultant. And then the story consultant, who is under contract, does what we agree on.

Q All right.

And that would entail possibly rewriting part of the script?

A In varying degrees, I would say that is correct.

Q All right.

And when you don't have a term writer, or his term has

not expired, he can be asked to perform those functions?

A Within the structure of the regulations agreed with the Guild, yes.

Q Yes.

A Definitely.

Q All right.

How -- other than what you have just described, in what manner and how does an executive story consultant supervise the creative part of the writing function of a writer?

A I think, to take it from the original steps, he has early meetings with the writer, and has an exchange of ideas that are eventually brought to the producer with a request to proceed.

And it is the producer's function to grant that request, deal with the material that he is talking about, or whatever --

Q Can you give us some examples of that?

A Suppose a writer comes in and talks to the executive story consultant, discusses an idea that they work with together?

They come into my office --

Q Now, at that point, the writer has already been hired, has he not?

A In some cases.

Q Or a deal made or a commitment made with the writer?

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A Yes, but not in every case. But often in cases, yes, and there is no -- in other words, writers can come in and pitch ideas, as I understand -- as I recall -- without having a prior deal made.

They can pitch an idea and we can make a deal. That happens, too.

But to talk about your step; let's talk about an outline. They talk about an outline, they may exchange ideas, and when they are through exchanging ideas, they come to me and tell me what their recommendations are and how to proceed with the material at hand.

And maybe it differs from some of the things that I have talked about with the story consultant, and then we agree generally speaking.

Q All right.

Now, let's assume that you have that first step, where you have the story consultant talking to the writers.

The story consultant is talking to the writer, and his initials talks to him are based on outlines set forth by you as to what you want to have in the series?

A Based on general formulas, yes.

Q Based on general formulas?

A Yes.

Q All right.

And then he gets together with the writer and describes

these general formulas to that writer, and then the writer takes it from there and tries to create something within the framework of that general formula.

Is that correct?

A Not exactly, but more exactly, the writers are generally well informed about what the intent is of the series before they come in; so that that initial meeting that you have described "go out and come back" doesn't always take place.

Sometimes a writer can come in and say, "What do you want in the series?"

And they have that conversation. And then he goes out and comes back with some ideas.

Q All right.

Now, when he comes back with some ideas, who does he come back to?

A He comes back, generally speaking -- and this is in my series and I don't know that every series works that way --

Q Yes.

A -- he comes to the executive story consultant.

Q And what happens at that point?

A They exchange ideas, sometimes for 10 minutes and sometimes for two hours.

And then they come to me and pitch what they have settled on. Often I agree with them.

I then go to my executive producer.

Q Well, assuming that you don't agree with them?

A Then we don't proceed.

Q All right.

And assuming you agree with them?

A We go to the executive producer who, generally speaking, would -- because we generally see eye to eye, approve the project.

Q And in your case that would be Mr. Victor?

A That is correct.

Q All right.

And if Mr. Victor disagreed with you, it would stop there?

A That is correct.

Q All right.

Now, let's assume you have gone through that meeting and there has been an agreement at your level and agreement at Mr. Victor's level.

What then happens?

A The writer goes and writes his outline and turns it in some time later.

Q All right.

Then there is a contract entered into for a term, and he has to have that script to you by a certain date?

A Outline.

Q Or outline?

A Right.

Q By a certain date?

A I'm sure that is the law of the -- of the relationship between management and the Guild, yes.

Q All right.

But -- well, for your production purposes, he also has to have it to you by a certain date?

A We work normally very well ahead so we are never in jeopardy with the writer in a non-delivery situation.

Q All righ.

Now, once the outline is delivered, the writer has been paid for his services with respect to that outline. Is that correct?

A He is paid when he delivers it, yes.

Q When he delivers it?

A Yes.

Q All right.

Now, you have the outline, and you have the writer pay for his services --

A Yes.

Q -- for giving you that outline, and you have got that creative outline; now, what happens to that outline at that point?

A If it is satisfactory to Mr. Victor and to me, then it

goes to the network.

And then when the network approves it, the writer goes to draft.

Q At that point you can choose another writer or the same writer?

Is that correct?

A I don't know if it's correct at that point. I know there is a cutoff clause with the writer; I don't know if it comes at the time -- it can come as late as that you have described.

Q All right.

A But it can happen, yes.

Q All right.

Now, after the outline has been approved through you, Mr. Victor and the network --

A All right.

Q -- now it comes down to the network some time later, and they say, "Okay, proceed with the script?"

A Yes.

Q And at that point you may or may not use the same writer, assuming that there is at that point, a cutoff time?

A All right. Technically, that is correct.

Q All right.

Now, it goes to that writer, and that writer then is instructed by or Mr. Victor or the story consultant to follow

that outline, or is that commonly known?

A Generally speaking, that is correct, and there may have been some comments from the network or some comments that we have that will require a revision of the outline that we want changed before we want -- or as the writer goes into script.

Q All right.

Now, the writer then is put under contract, or whatever you have for the writing of that script; is that correct?

MR. KEATON: Object to that, your Honor; it calls for a conclusion of the witness. Furthermore, it is totally immaterial and irrelevant.

We are not trying an R Case on the writers, but a C Case.

It is also beyond the scope of the direct examination.

JUDGE: Just a moment. Is it essential to your point whether or not an actual contract is signed?

MR. GOLDMAN: No, your Honor.

JUDGE: Let's get to the point.

MR. GOLDMAN: It is not essential at that point.

(By Mr. Goldman) All right.

Now, at that point it is given to a writer to perform writing services to produce a script.

Is that correct?

A Yes.

Q And usually, again, there is a day in which he has to get the script to you?

A I believe that is correct.

Q All right.

Now, once he gives you the script, he is paid for the script regardless of the quality of the script; isn't that correct?

A That is correct.

Q And whether you hire him again will be determined by the quality of that script, however.

Is that correct?

A I think that is a fair statement.

Q All right.

Now, once you have the script, what happens? Now, the writer has been paid for his services, and he could be doing something else, what happens?

A I believe there is a period of time where we get back to the writer, and we are entitled to a revision.

So that step takes place.

Q All right.

A And that is always as a result of an exchange of ideas between me and the story consultant.

When the writer finally turns that revision in, and is paid off, and whether it be in one check or two checks, I don't know, but he is paid off and his work is essentially

finished, I would say.

And any changes that we want to make are made by the story consultant on staff.

Q Now, any changes made by the story consultant can be anywhere from a total rewriting of the script to just changing two words in the dialogue?

A That is correct.

MR. GOLDMAN: I have no further questions.

JUDGE: Mr. LeVine?

MR. LE VINE: I don't have any further questions.

JUDGE: Mr. Keaton?

MR. KEATON: I have a few since Mr. Goldman opened up this line of questioning.

REDIRECT EXAMINATION

Q (By Mr. Keaton) You were asked on direct examination, Mr. Epstein, whether you attended the meeting at which the Guild had offered the strike rules?

A Yes.

Q Do you remember where the meeting was held?

A I believe it was held at the Beverly-Hilton.

Q All right.

On that same day, did you attend another meeting of the Writers Guild -- or approximately the same day -- at its own Board room on Beverly Boulevard?

A I attended one of those, but I don't know that it was

And even though I don't like it brought up on redirect, I am not supposed to say that the witness can't be asked this question -- these questions at this time, and require that counsel bring the witness back to the witness stand at another time.

That doesn't seem to be either an efficient or proper way to order this hearing.

Continue. I will take objections to specific questions as we go along.

MR. KEATON: Thank you, your Honor.

Q (By Mr. Keaton) Did you attend this meeting at the Guild's offices or the board room on February 15th, 197??

A Yes.

Q All right.

How many people approximately were there if you recall?

A I would say somewhere in the vicinity of 100 to 130 or 40, something like that.

Q Did you know many of them?

A Yes.

Q What kind of capacities did these people hold in their employment, if you know?

A I would say mostly in producer/writer capacity.

Q Were there some director-writers there also whom you knew?

MR. GOLDMAN: I object.

AFTERNOON SESSION

2:10 P.M.

ADMINISTRATIVE LAW JUDGE: On the record.

Mr. Keaton, do you want to proceed?

MR. KEATON: Before I proceed any further, your Honor -- and I thought I had done it before -- but to make the record clear, I would like to now offer Association Exhibit 1 into evidence.

JUDGE: I thought about that over the lunch time.

You did offer Association's Exhibit 1 and there was an objection from Mr. Goldman.

And I think that it was that objection that I didn't rule on, or perhaps I did.

In any event, on the basis of the discussion prior to lunch, I am overruling the objection and Association Exhibit 1 is received.

(The document above-referred to was received into evidence as Association Exhibit No. 1.)

JUDGE: Proceed, Mr. Keaton.

Q (By Mr. Keaton) Mr. Epstein, just before lunch, I asked you whether you attended a meeting pursuant to this notice which is AMDP Exhibit 1, and I think you testified you did?

A That is correct.

Q Who presided at that meeting, if anyone?

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A Well, I never got the impression that any specific individual presided as I recall it.

Q Were any officials of the Guild present whom you know?

A Yes. There was Guild representation. I don't know Mr. Franklin, but if that was Mr. Franklin who was sitting next to Mr. Goldman --

Q You mean earlier this morning?

A Yes.

Q That was Mr. Franklin.

A Then I would say that he was there. And I believe that was the meeting that Mr. Hackler attended to answer any questions of -- that were asked by the hyphenates -- that were anticipated of being asked by the hyphenates in terms of jurisdiction.

Q Did you attend more than one Guild meeting at which hyphenates were invited specifically?

A I must say that they start to run together. I believe I attended a hyphenate meeting at the Guild, which is the one we are talking about, and there was another one that existed, I believe, after the strike started at the Beverly Hilton.

It was in a so-called private room at the Hilton. And there was a caucus, if you will, of hyphenates.

The Universal people -- it was an informal gathering; and that was another discussion that was held. And to the

best of my memory that is -- does that answer your question, sir?

Q All right.

Now, this was not the meeting at which the strike rules were voted on.

Is that right -- none of these you have now described?

A No. I don't think the strike rules were voted at anything other than the general membership meeting of the Writers Guild.

Q Where was this general membership meeting held?

A At the Beverly Hilton.

Q And you attended that one?

A Yes.

Q All right.

And was that the time that you were handed a colored card when you walked in?

A Yes.

Q What was the purpose of that card?

A I can only guess since there were many colors, and that when I was handed it, a lady at the desk looked in various sections of a book to find my name and various colored cards were handed out.

But it is designated a status within the Guild organization.

Q And the status in your case being what?

A Associate member.

Q All right.

Was any explanation given at the meeting as to who got what cards?

A I believe there was; I don't recall the details of it.

Q All right.

Going back to the other meeting -- that hyphenate TV meeting which Mr. Franklin attended -- was anything said at that meeting by Mr. Franklin or any other official of the Guild as to whether the strike rules were intended to apply to producers and people such as producers?

MR. GOLDMAN: Your Honor, again, I'm going to have to object.

When the Association exhibit was offered, it was offered on the basis that that was the meeting -- the general membership meeting that resulted in the strike vote.

There is testimony now on the stand that the -- there was not that meeting.

So now Mr. Keaton through some device, is now trying to get back into the hyphenate meeting which was never brought up on cross-examination or direct.

I think it is very improper at this point.

JUDGE: Mr. Goldman, we discussed that at length on this precise point, and I recall, before lunch, ruling that

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which you gentlemen have.

I wasn't party to them and didn't know of them.

To a certain extent, I might recognize their validity, but in the case of relevant and proper evidence which one counsel offers, I will only prevent you from adducing that evidence if there is a good and substantial reason or rule of evidence barring it.

I know of none here.

Now, let's proceed, gentlemen, or let's excuse the witness.

MR. KEATON: I do not want to put the court reporter to the trouble of finding my question.

I will restate it.

Q (By Mr. Keaton) Was anything said by Mr. Franklin at that meeting, if you recall, concerning whether or not the proposed strike rules would be applicable to producers or directors?

A I believe the answer to that is yes there were; the meetings begin to run together in my mind in terms of the general membership meeting and that meeting.

I would have to say in answer to your question, the best of my recollection, yes.

Q All right.

And was anything said about whether the strike rules would be applicable to the persons -- the hyphenate persons

at the meeting -- only in their writing capacities or any capacity in which they might be serving for the struck employers?

A At all times when that subject came up in all of the meetings, it was made very clear by the members of the Guild Board that attended that all writers in any capacity were prohibited from crossing lines and going to work in any capacity.

Q All right.

And the persons who made these statements, you said, were members of the Board.

Can you identify some of them by name?

A I know that Michael Franklin made that statement. I believe there were others that made it; I'm certain there were others that made it whose identity I didn't know.

MR. KEATON: That's all I have.

JUDGE: Mr. Fisher, any questions on this particular point?

MR. FISHER: No.

JUDGE: All right.

Mr. LeVine, before Mr. Goldman, do you have any questions on the specific point raised by Mr. Keaton?

MR. LE VINE: No, your Honor.

JUDGE: All right.

Mr. Goldman.

A I would say probably Bob Cinader. And -- as close as there is to chairing; I mean, someone ran it, yes.

I guess it was Cinader.

MR. GOLDMAN: I have no further questions.

JUDGE: Mr. LeVine?

MR. LE VINE: I have none, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: None.

JUDGE: Mr. Fisher?

MR. FISHER: I have none.

JUDGE: All right.

Now, this is a question for my general information concerning a word that all of you use as if it were second nature.

Would you describe for me what you mean when you use the word "hyphenate?"

THE WITNESS: Yes, your Honor.

I will be more than happy to do that.

There is a general industry-wide meaning, and I think that is the one that you mean, and not what I necessarily mean.

It is someone whose functions are multiple so that there is a hyphen separating the jobs that the individual functions in.

For example, producer-director, writer-producer, actor-

writer.

I have found, and I would like to make this a part of my answer, that there is no single definition of a hyphenate in anyone's mind because hyphenates have so many diverse problems and diverse representation.

If I may go further, in my case, my hyphen is there only because of 10 years ago I joined the Guild.

JUDGE: All right.

Now, I am beginning to get the impression -- and I will test it at least against you --that when you speak of a hyphenate, you are thinking in terms of a person who is actually performing two functions or potentially may perform two functions.

Would this be correct?

THE WITNESS: I would say that that is correct, sir.

JUDGE: Any questions on this matter which I raised with the witness?

MR. GOLDMAN: None from me, your Honor.

JUDGE: Mr. LeVine?

MR. LE VINE: I don't believe so, your Honor.

JUDGE: The Charging Parties?

(No response.)

JUDGE: I hear no responses. So, you are excused; thank you very much.

THE WITNESS: Thank you, your Honor.

JUDGE: All right.

Call your next witness.

MR. LE VINE: All right.

Your Honor, we would like to call Mel Sattler.

Your Honor, this witness will testify substantially the same as Mr. Mittleman who testified yesterday as to the duties of an executive producer, or producer or an associate producer or director or story editor.

And we would ask that it be stipulated that this witness's testimony would just be corroborative of previous testimony.

JUDGE: Well, based on what Mr. Goldman said earlier this morning, you are specifically stating that this witness would be corroborative of Mittleman?

MR. LE VINE: That is correct, your Honor?

JUDGE: Mr. Goldman, do you wish to stipulate?

MR. GOLDMAN: No, sir.

JUDGE: All right.

Mr. LeVine, you have to develop that through testimony.

Whereupon,

MELVIN SATTLER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Will you please state your name for the record.

A Melvin Sattler.

Q And what is your address?

A 5403 Oak Park, Encino, California.

Q All right.

Where are you employed?

A Universal Pictures.

Q And what is your position?

A I am the Business Affairs Feature Production Vice-President.

Q All right.

And how long have you held this position?

A Approximately eight years.

Q And could you tell me what your duties are?

A I am a negotiator in putting together deals that are made with respect to employment for individual writers, producers, directors.

The purchase of literary property, co-production arrangement, financing arrangements, negative pick-up deals, buying of plays, and general troubleshooter wherever there is a large problem in the feature end.

Q All right.

And can you tell me what your previous experience in

the motion picture industry is?

A I was employed by Universal Pictures Company, Inc., in 1947.

And I have been at the same place ever since.

Q And what were your duties --

A I was employed as an attorney in the Legal Department.

And in that department I not only negotiated deals but drew contracts, drafted agreements and all phases of the production of feature motion pictures.

Q All right.

As part of your background, are you familiar with the duties of the various personnel involved in the production of theatrical motion pictures at Universal?

A Yes, I think I am.

Q All right.

And could you tell me what the duties of the producer function are in the production of theatrical motion pictures?

A A producer's duties in connection with the feature motion pictures is that he supervises all aspects of the production of that motion picture from the moment of conception, preparation, actual production and closed production, and is involved in the advertising and publicity campaigns up through to the point of release.

Q All right.

Now, could you be specific as to the initiation -- from

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the initiation of the project through its exploitation, what would be the specific duties that a producer in a theatrical film would --

A Wwell, let me give a hypothetical situation which I think would emphasize the whole aspect of it.

A producer either is deliberate of literary material or comes across a piece of literary material. And in this instance for example, he decides that we buy the book "Ben Hur."

And his concept is that he isn't going to tell the story of Ben Hur; he wants to tell the story of Ben Hur's sister.

And he will sit down and interview writers along that concept.

Say that there are 14 characters in this book, and he will say "I want 11 of them compacted into one. I don't want to tell the story of Ben Hur -- everybody else has told the story of Ben Hur -- I want to tell the story of Ben Hur's sister with one of the other characters."

The writer seems to go along with that concept. And then I have a meeting of the minds on that concept.

And the producer will hire that writer.

If the writer does not and then he thinks he is -- doesn't agree with it, then we will find a writer that will.

And when that writer is hired, he will explain his

concept even in more detail to that writer.

And that writer will go to work following the concept that the producer has given him along the lines that he wants that script written.

And will work very closely with that writer.

And depending upon the producer and the writer, and the personalities involved, that writer may write in the producer's office -- an office alongside -- and be in constant consultation or he may deliver so many pages.

And then they will be in constant consultation with each other until development of that script reaches its climax in accordance with the arrangements that they have made.

If they made an arrangement for a treatment, the treatment will be delivered, the producer will go over it, and if he is satisfied with it, and wants to take the next step with that writer, he will sit down and discuss the matter with the writer, what direction he wants him to go and ask the writer to proceed along those lines in connection with creating the first draft screen play or final screen play, depending upon the situation.

Upon completion of the screen play and during the process of development, the producer will also be considering the type of costuming, the type of sets that he has in mind, and is probably thinking about the type of casting

that he wants.

And upon the completion of the script, and the script is satisfactory and they intend to go ahead and make that picture, the producer will then call in an art director.

He will tell him what kind of sets he has in mind after having read the script.

And then the art director will bring back to him sketches and he approves of those sketches of the sets and actually approves the actual sets.

And the same with costuming along with the wardrobe department.

Of course, he gives him designs and sketches, and he will also approve the development of that.

Also, in the meanwhile, he will have to be thinking about a director. And he will interview directors that he thinks that he would like to have direct this project.

And he will finally come across a director who in concept agrees with the producers concept, or they may come together and amalgamate both their concepts.

He hires the director. He will supervise the directors' activities up to a particular point.

He will consult with the director and business executives that are involved with respect to casting, all within the budget, of course.

I mean, the producer had to have his script budgeted, and

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he would work very closely with the Budgeting Department as to cost of the picture and whether or not it was feasible.

And in the event the budget is slightly high, and he didn't intend to make a picture at that price, he may go back to the writer and ask the writer to make certain revisions and changes with respect to scenes that will either cut down the cost of the picture or, maybe, that could be eliminated.

Once the -- I have to categorize a line producer as an admiral on a ship.

Everybody really being under his supervision.

And when the director goes on the stage, the director becomes the captain on the stage where the physical production is being made.

The producer function at this particular time is to see that the picture proceeds along its shooting schedule, within its budget, and to keep the whole operation running smoothly.

In the event there are any problems, the producer is like a separate unit spending his own money, even though he has to answer to the so-called front office.

And in the event a problem arises on the stage, with respect to an actor -- principle actor -- having some sort of a problem, then the actor will either go to the director if he is a principle actor, or to the producer.

The director will obviously ask for the producer's consultation; because the director has his hands full as it is.

He has got a full crew going and he wants to keep his picture going and would like the producer to handle this matter.

Assuming that the picture is shot -- completed -- now the producer will get into the post-production stage, supervising, cutting, editing and dubbing subjects, of course, to the director's right of first cut.

You have to select music, hire the composer, have the picture underscored, and actually bring the picture to the point where it can be ready for release.

In the meantime, he is also in consultation with the advertising and publicity department.

This is on a consultation basis, where he is giving the advertising and publicity department his views and his thought in connection with how the picture should be advertised.

And the advertising department will bring him sets of ads for his suggestion and sometimes approval.

And, basically, that is what a producer does. He is instrumental in hiring personnel that is involved, and if necessary, causing their discharge or discharging them.

Q All right.

You mentioned in your testimony that the producer will

deal with certain problems that arise in the production of the film.

Could you describe the types of problems that arise from your personal knowledge?

A From my personal knowledge? Well, just recently, -- I won't give you the name of the photoplay or the name of the individual -- but the director notified the producer that he was very unhappy with the cameraman that had been hired on this particular picture.

He wasn't getting what he needed in connection with his concept and with respect to the type of shots that he wanted, and the type of staging that he wanted from the camera angle.

And he stated that he was very unhappy and wanted to consult with the producer about it in order to satisfy and alleviate the problem and replace the cameraman.

And we did eventually get what we wanted. That is one of the problems.

If a picture should be going over budget, that would be the biggest concern probably to the producer; as he is directly responsible to the business front office.

And he is going to find out why that picture is going over budget and what can be done about it. And obviously if it's going over budget, it could be because they are going over schedule, and he would find out what the reason for going

over schedule is because going over schedule is money.

Or if there is some -- or if there is not a harmonious cohesive working crew and element going on along with the actors and directors and any other matter that can be occurring on the stage that can be holding up the situation.

Q All right.

Could you tell me what the producer function is -- the director function is on a theatrical motion picture film?

A Well, the director -- I gave the analogy before where I said the producer was an admiral.

Now, once that picture goes on the stage I think the director could best be categorized as a captain of the ship.

On the stage he is the man that is in charge; being in constant consultation with the producer who is actually the supervisory individual.

But on the stage, the director supervises what happens there.

He determines and tells his first assistant and/or the cameraman -- the director of photography -- how he wants the particular scene shot, the mood he wants, the lighting he wants, and the angle that he wants.

And then he directs the actors in their performances; and whether or not he is satisfied with what he has just seen and what he needs to be reshot and whatever angle he needs in connection with that particular scene.

He has a shooting schedule to maintain.

If he is dissatisfied with -- say for example, a cameraman, he will discuss the matter with the producer. And the producer will 99 times out of 100 go along with the director because the director has to work so closely with the cameraman.

If the cameraman isn't satisfactory to the director, the cameraman will be replaced, or any other key individual that isn't giving the director what he wants.

Q All right.

Now, could I ask you if the director will recommend that any type of person be hired?

A Yes, generally -- and I might say more than just generally.

In most of the cases a director will have a certain cameraman he would like to work with. And he will recommend that this cameraman be hired.

And his recommendation will -- unless the cameraman's deal at that time is so outrageous that it wouldn't fit the budget -- but assuming that it fits the budget, that cameraman will be employed because of his recommendation.

Q Do problems arise on the actual set in the shooting of the film?

A Oh, yes. Actors can blow their lines or become temperamental.

And a director is quite instrumental from a psychological standpoint of putting the actors in the proper mood, keeping them in a state where they can perform their duties as they should.

And if these problems come up, the director will probably be the first one to try to settle that matter and to placate the individual.

If he can't or if he needs help, he will go to the producer, and he will give him help.

From a technical standpoint, problems will arise with respect to either his key grip or his cameraman, or his -- any other person who is handling the function in connection with the production, then the director will immediately step in and probably instruct his first assistant either to have that man do it "this way," or if he can't, to replace him.

Q All right.

Is there a story editor or executive story editor in the theatrical motion picture industry?

A I'm sure there is one in the industry.

Q I mean, at Universal?

A No, not at Universal.

Q You do not have them for the theatrical?

A Not for the theatrical, no.

Q All right.

MR. LE VINE: I believe that's all the questions I have of this witness, your Honor.

JUDGE: Mr. Miller?

MR. MILLER: No questions, you Honor.

JUDGE: Mr. Goldman?

MR. GOLDMAN: No questions.

JUDGE: You are excused. Thank you very much, Mr. Sattler.

(Witness excused.)

JUDGE: We will take a five-minute break. Return at 3:00.

(Short recess taken.)

JUDGE: On the record.

Call your next witness.

MR. LE VINE: Our next witness, your Honor, is Herman Saunders.

Whereupon,

HERMAN SAUNDERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name.

A Herman Saunders.

Q And what is your address?

A 3551 Vista Haven Road, Sherman Oaks 91403.

Q Where are you employed?

A Universal City Studios.

Q In what capacity?

A Executive Producer of "Adam 12."

Q All right.

And how long have you held this position?

A As executive producer only in the past four months. Prior to that for the previous four years, I was theproducer.

Q Could you tell me how you are employed?

A Generally, I think the best frame of reference would be as producer of "Adam 12", in which I am supervising --

Q The question is: do you have a personal services contract?

A A personal services contract, yes.

Q Is it directly with you?

A No, it isn't. It is with Herman Saunders Enterprises, Inc.

Q All right.

And are you on loan-out under the personal services contract?

A Yes, I am.

Q Does Herman Saunders, Inc. do any other business other than loaning out your services?

A No.

Q And what are your duties as an executive producer?

A Supervising all areas of the producing or the production of Adam 12, and naturally a little bit above the actual producing chores because I am a producer.

Q All right.

And could you tell me specifically what you do?

A Checking the scripts, the ideas for the scripts, and when in production, all phases of the production.

I naturally am told by the producer whom he has in mind for writers, directors, crew, cast and everything which has to do with the production.

And then I also get very strongly into the post-production areas.

And I carry it to its extreme finish.

Q All right.

When your producer tells you he would like to hire as a writer or a director, or crew, who makes the decision as to whether or not that person would be hired?

A I do.

Q All right.

Do problems arise in the production of Adam 12?

A Frequently.

Q And as part of your duties, do you resolve those problems?

A Whenever possible.

Q Do problems arise with respect to employees who are working under you in Adam 12?

A Yes.

Q Do grievances arise with respectto the employees?

A Yes.

Q All right.

Could you describe the type of grievances that come to your attention?

A Anything which has to do with a problem on the set will eventually get to me.

One of the first -- one that was brought up today, as I remember, was problems between directors and cameramen; and that is one of the often found problems.

It can be something even when an extra feels that he is being underpaid for a particular piece of work that he has done and demands extra compensation.

And that will eventually get to me.

Conflicts such as an art director having his set completed to his satisfaction and then feeling that the set decorator hasn't done a good job on the set, and coming to me and saying, "We have got to get this straightened out."

Q Do problems arise with actors with grievances?

A Yes.

Q All right.

Can you give us an example?

A It can be actors not liking what they are doing in terms of action.

They may not like what the director is telling them to do.

And we have a technical advisor -- a sergeant from the Los Angeles Police Department. And it may be something that is inconsequential as his telling them they must wear their caps while they are running after a suspect.

Q All right.

And do actors ever complain about their dressing rooms?

A Oh, often. That is indigenous --

Q And would that problem come to you?

A Yes, it does, and it did.

Q And can you tell us of that specifically?

A Yes. We have two stars in our production with equal filling and equal talent, shall we say, and one by the luck of the draw, had, say, a very good dressing room and one had a lesser dressing room.

And after a period of time, it became an abrasive area and I had to get in very strongly with "to tower" as we say -- the men upstairs.

And it was finally adjudicated that they both have the same size and type of dressing room.

A Yes, I think so.

Q As well as the actors,cameramen, directors, other producers?

A If he felt that someone was malfunctioning or someone was unable to do their job, he would tell me, and in all probability, something would happen.

Q All right.

And I take it you have been a member of the Writers Guild of America West for some time, have you not?

A Around four years, I would hazard a guess.

Q You have been a member of the Writers Guild for four years?

A Yes.

Q All right.

And what prompted your admission into the Writers Guild?

A I had co-written and co-created a property for Universal Studios.

Q Which property was that?

A It was a comedy -- half-hour comedy by the title "Over There."

Q And on the basis of this co-writing and co-creation, you became a member of the Writers Guild?

A Some time after I did that, yes.

Q Approximately how long ago was it?

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A I would say -- I wrote it in '67 and I joined the Guild around '69.

Q Was "Over There" ever produced?

A No. I'm really sorry.

Q Well, I don't watch television.

Since "Over There" have you done any creative writing in the television or theatrical motion picture area?

A No.

Q All right.

And when you say "no," do you mean -- strike that.

I am not talking about for profit writing.

A I have done whatever creative thinking would be necessary in order to get the "Adam 12" scripts up to whatever shape I feel that they should be in.

But it has been through a story editor at all times.

I have always had a story editor. And if I will say "This doesn't feel well to me," we would make a little change.

Q You would make a change?

A Not physically. I don't do that.

I hate to admit that I don't have a typewriter in my office.

Q What prompted you to request the resignation from the Writers Guild in January of 1973?

A After going to some of the -- there was a hyphenate

MR. KEATON: I have no further questions.

JUDGE: Mr. Fisher?

MR. FISHER: One second, please.

I have no questions.

MR. GOLDMAN: None, your Honor.

JUDGE: Mr. Saunders, thank you. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

JUDGE: Mr. LeVine, do you have another witness?

MR. LE VINE: Yes, I do, your Honor.

I will call Mr. Swerling.

Whereupon,

JO SWERLING, JR.

was called as a witness by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Please state your name for the record.

A Jo Swerling, Jr.

Q What is your address?

A 19375 Wells Drive, Tarzana, 90356.

Q That is California?

A Yes, sir.

Q Where are you employed?

A Universal City Studios.

Q And in what capacity are you employed?

A Producer of a television series.

Q All right.

And how long have you held this position?

A I have been -- held the position of producer for approximately 10 years.

Q At Universal?

A Yes.

Q And do you have a personal services contract?

A Yes, I do.

Q And how long is that contract?

A The overall length of the contract is seven years; I am entering into the second contract.

Q All right. --

A The current contract.

Q -- and what are you presently working on?

A My present assignment is a proposed series for next season entitled Toma.

Q All right.

And could you tell me what your duties are as a producer?

A Yes.

In general, the producer is held responsible by top level management of the studio and by the network client for the quality, timely delivery and cost and all aspects of

production of the television films under his supervision.

Q All right.

Could you go into some detail as to the types of duties that you perform?

A Well, chronologically the effort begins with the selection of the stories and the writers, the development -- the supervision of the development of the stories until the story is satisfactory.

Once a story is approved, the supervision of the development of that story through the various drafts of teleplay -- script.

Once the script is approved, the producer supervises all aspects of pre-production which includes the hiring of the director, the supervision of all of the director's activities and the preparation, which includes casting, wardrobe, selection of sets, selection of locations, special effects, make-up -- if there is any special nature to the make-up, selection of music that might be needed on the set during the filming, and preparation of the budget.

And that also includes seeing to it that the script -- the changes are made in the script to accommodate the budget.

And once everything has been done and you are ready to start shooting the producer has -- supervises all aspects of the shooting, which includes the viewing of the dilies, which is the film shot the day before.

And requesting additional shots, changes, reshooting, depending on his views of the dailies.

And resolving problems which are endless. It includes making sure that the director adheres to the schedule.

Once the show is finished shooting, we supervise very closely the editing of thepicture through various evolutions.

We supervise other aspects of close production such as sound effects, underscoring, music. We select the composer and give the composer our views as to what kind of music we would like to hear.

We supervise the scoring session if time permits. And when the music is actually recorded, we supervise the dubbing sessions -- all of the music and sound effects and group dialogue, so forth and so on, incorporated into one sound track.

The last major creative evolution of the production is this.

And then when the film comes back from the lab in composite form, it is our responsibility to check it to make sure that no errors have been made in the negative cutting or that the color is right, and the print is substantially of broadcast quality.

And then it is shipped to the network, and we go on to the next one.

Q All right.

Do grievances arise with respect to the production of television series films?

A Yes. Quite frequently.

Q All right.

Could you tell me the type of grievances that arise?

A The most frequent -- the grievances most frequently stem from the star of a television series. I'd say that 95 percent of your grievances and 95 percent of your time resolving grievances, relate to the star.

And they get temperamental. They don't like a script, they don't like a scene, don't like the dialogue and don't like the way it is staged.

They have conflicts with the director, and they sometimes have conflicts with the cameramen. And they have conflicts with other stars -- their co-stars in a series.

And they have conflicts with guest stars. And most frequently -- occasionally the director will attempt to resolve these grievances.

But most frequently, he is unable to. And they come up to the producer who has to resolve the differences.

And he has to approve of the changes which he may agree with. In other words, if an actor has a grievance about a scene, it may be valid -- frequently is -- and then the problem comes up "how do we change it?"

And it is the producer's function to consult with the actor and the director on proposed changes and to approve it.

Q All right.

Could you give us a specific example of the types of grievances that you would resolve?

A Well, along the lines I have been describing, if an actor objects to a line of dialogue, it is the understanding with every director that works with me, that no changes will be made in the dialogue without my authority.

And so, I will get a phone call and I will go down to the set and listen to the actor s complaint about the line of dialogue.

If I think he is right, I will be open to suggestions from the director or the actor, or I will have an idea myself as to how to change the line so it doesn't lose its meaning, and so that it is more comfortable for the actor to say.

Or I will have to persuade the actor that there isn't a better line than that, and he had better read it the way it is written.

Q All right.

And do grievances ever arise with respect to assignment of dressing rooms?

A Yes. That is a common grievance, particularly when there is more than one star involved; because they want equal treatment.

This doesn't necessarily mean that you have to have two co-stars on a given show.

If you have a star of series, "A" and he finds out that a star of Series "B", which is also being filmed at Universal, has a more luxurious facility, he will want equal treatment.

And it is difficult to do because they have a limited amount of dressing room facilities; and they vary.

So it is a difficult logistical problem for people at the studio or directly in charge of dressing room facilities.

And the actor needs a spokesman, and that is always the producer.

He will complain to the producer, who will then attempt to put pressure on the people who have direct control of the facilities to accommodate him.

And we always try to do that because we like to have the actors happy.

Q All right.

Do any other types of grievances arise other than dressing rooms and objections to lines?

A Yes. I had a situation last season where an actor was convinced that a set had been improperly constructed in order to achieve a certain special effect that we were trying to create.

And he left the set and locked himself in his dressing

until we built an entire villa in effect, instead of a portion of a ceiling.

And I had to spend about an hour of my time explaining to him that there were a great many people who were qualified experts in how to achieve movie magic; and that his specific job was to act in the picture.

And if he would please have faith, that the people who are experts knew what they were doing, and if he would concentrate on learning his lines, which he wasn't accustomed to doing, prior to coming to work that we all might be better off, and we could get the job done.

And ultimately my persuasion worked. And he went back and we shot the scene and it was very effective and worked exactly as the special effects people, the director, the cameraman and myself had planned.

Q Do grievances ever arise with respect to stunt men?

A Yes. I haven't had personal experience with them, but I have heard of occasions where stunt men --

MR. GOLDMAN: I object --

MR. LE VINE: I withdraw the question --

JUDGE: All right.

MR. LE VINE: -- since this is without the personal experience of the witness.

THE WITNESS: That never happened with me.

JUDGE: All right.

A Yes.

Q And when was the last time that you were employed as a writer in the motion picture television industry?

A Well, I would have to say that the last time that I filled out a contract for services as a writer was earlier this year; in February I would guess.

Q And when was --

A The nature of the employment was a polish on a pilot script that we were preparing for production called "Toma."

Q All right.

And when was the last time that you received a writing credit?

A In 1965, which was -- I received a credit for the story which was the basis for the pilot for the series "Run For Your Life."

MR. MILLER: No further questions.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

Q (By Mr. Fisher) You referred in your testimony to problems with extras, and whether or not they are entitled to bumps, or special bits --

MR. GOLDMAN: Excuse me. I think it was silent bits, not special bits.

MR. FISHER: I'm sorry.

Q (By Mr. Fisher) Silent bits. What Guild do extras

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Swerling, you are a member of the Writers Guild, are you not?

A Yes.

Q Are you a member of any other union or Guild?

A Screen Actors Guild.

Q Are you a member of the Producers Guild?

A No, sir.

Q That is the Screen Actors Guild and Writers Guild. Is that correct?

A That is correct.

Q All right.

Now, I understand from your testimony on direct that you received a writing credit and joined the Writers Guild because of your work on a project which eventually became "Run For Your Life", a television series starring Ben Gazarra?

A That is correct.

Q Did you originate that series?

A No.

Q Create it?

A No. I wrote the story, which was the basis for the pilot script, but the concept was created by someone else.

Q All right.

And you just stated on direct that in February you

and I hire myself, if you will.

I must make out a single picture writer's contract covering the kind of services that I perform.

And in the case of the 90-minute show, I did sufficient rewriting on that script in my judgment that it went beyond the exclusions -- the definition of a writer.

And in my estimation it constituted what the Writers Guild define as a "polish", which is the kind of employment which requires the least amount of writing services.

And so a contract was executed for that employment and sent out and filed, and I was compensated for it.

Q Was that contract entered into after you realized the amount of services that you were performing on the 90-minute total?

A Yes.

Q All right.

Let's take the proposed series that you are a producer on.

Is it not true that there is a possibility you might be involved in the polish as you described it on that proposed series?

A Yes, it is possible.

Q And if that were to occur, then you would then again contract yourself out.

Is that correct?

A Well, I don't think I can answer that correctly because --

MR. KEATON: Before you do, I would like to object. This is highly speculative at this point, particularly since at the moment there is no contractual relationship requiring any such hiring out.

JUDGE: Mr. Goldman, why is this hypothetical situation relevant?

MR. GOLDMAN: Well, your Honor, our position is as recently found by the Ninth Circuit, that during the course of the strike, the union has a right to discipline its members for crossing picket lines without violating 8(b)(1)(b) even though they are "supervisors" within the meaning of the Act.

Our position here is to develop a record not only for the Board, but for the Ninth Circuit in case of enforcement; that what we are getting to is the fact of disciplining these people to prohibit them from any chance of doing writing functions that come under our expired Guild contract.

They want to prohibit that.

And that is why we were having these hearings and these men are standing trial.

I think this is an important element of our case.

JUDGE: Well, I hate to do this, but can you find the answer to the witness's -- the last question and answer as

far as it went.

(Question and answer read by the reporter.)

JUDGE: I'm going to overrule the objection, but I want you to restate your question.

And I want to reconsider it when you restate it.

MR. GOLDMAN: Well, let's have it read back and you can reconsider my --

JUDGE: No. He read it back and it is a partial question, and it is going to be too difficult.

The pending question depended on the answer to a previous question, and a previous answer.

And what I am asking you to do is to rephrase your question so it stands alone.

MR. GOLDMAN: Well, may I have the question that I asked read back, to figure where I was at the time that I asked the question?

JUDGE: Would you read the last couple of questions and last couple of answers?

(Question and answer read by reporter.)

MR. GOLDMAN: I will withdraw the question that there was an objection to.

Q (By Mr. Goldman) Have you written any scripts or done any polishes for Toma since the inception of the strike?

A No.

Q What is the status of the proposed series of Toma right

now?

A It is at a standstill right now. With respect to the development of material --

MR. KEATON: Objected to.

I would like to move to strike the answer. I didn't object quickly enough.

I think that is completely irrelevant to the pleadings and he is merely being asked for the purposes of assisting the union in the strike in finding out what the empbyers are doing.

This is a supervisor and I don't think it is any of the union's business what is being done on this particular episode.

And the NLRB is not the way to find out.

JUDGE: I think I see where Mr. Goldman is going. But I will sustain the objection only in terms of the phraseology of the question.

But I won't strike the testimony as it stands. Do you want to proceed?

MR. GOLDMAN: Yes.

JUDGE: You are sitting there reflecting. I don't know whether you are confused by my ruling or not.

MR. GOLDMAN: Well, I was a bit confused by your ruling but --

JUDGE: It is my habit to explain my rulings if anybody

is in doubt.

I assume from your argument that you have an inquiry as to what the witness is doing in respect to writing.

That is one thing.

Your question, however, went to the status of a piece of work which was somewhat different and broader; and I have sustained the objection to the last question.

MR. GOLDMAN: But you have accepted the answer.

I believe that is what you said.

JUDGE: Yes. But as I recall, the answer was that the piece of work remained status quo.

I see no reason for striking that answer.

MR. GOLDMAN: I have no further questions.

Let the record show that I am handing back to the General Counsel the affidavit of Mr. Swerling.

MR. LE VINE: Thank you.

JUDGE: Mr. LeVine?

MR. LE VINE: I have no further questions, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: Yes.

REDIRECT EXAMINATION

Q (By Mr. Keaton) Mr. Swerling, to date, has anyone in the Management of Universal since March 5, asked you to perform any writing services?

A No, sir.

corroborative or merely repetitive material which we have previously had.

Call your next witness, Mr. LeVine.

MR. LE VINE: My next witness, your Honor, is Stephen Heilpern.

Whereupon,

STEPHEN HEILPERN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name.

A Stephen Heilpern.

Q And what is your address?

A 10945 Bluffside Drive, Studio City.

Q California?

A Yes.

Q Where are you employed?

A At Universal Studios.

Q In what capacity are you employed?

A Associate producer in Television.

Q And how long have you held this position?

A A little over six years.

Q And do you have a personal services contract for your services?

Q (By Mr. LeVine) What was -- what were your previous duties prior to assuming associate producer status in Toma?

A I had been with MCA for almost 16 years and at Universal Studios for 10.

I was in the business office for the first four years of the 10 years at Universal.

And from there, I went -- became assistant to the producer, and then associate producer.

Q And on what programs were you associate producer?

A "Run For Your Life," and the lawyers segments of "The Bold Ones," and "Alias Smith and Jones," and -- countless -- well, I'd say around 15 other hour-and-a-half or two-hour movies for television.

Q All right.

Prior to working on Toma, what was your last assignment?

A Associate producer on "Alias Smith and Jones."

Q When did you assume your duties as associate producer of Toma?

A Well, I assumed my duties as associate producer of a pilot -- I suppose it was back in November of 1972, or October, when we first started preparing that project.

Q All right.

Could you describe your duties as an associate producer?

A Yes. In our particular production unit, our duties overlap; consequently, I am involved in all areas of pre-

production, production and post-production.

I sit in on story conferences when the story to the scripts are developed.

I help criticize the drafting of scripts as they come in. And when they finally have what is called the "shooting script," I help supervise the director.

I also help decide who the director is going to be. My advice is very often taken.

And with the director, we help look for sets, pick locations, pick wardrobes, different make-up problems, and we are very much -- I very much am involved in casting -- all phases of pre-production.

And once the show goes into production, I try to be on the set as often as possible to supervise anything that may happen there.

Very often there are disputes. And if I happen to be on the set, I will attempt to settle or arbitrate the dispute.

As an example, one of the lawyer segments of "The Bold Ones," one of the actors asked that a prop not written in the script be included.

It happened to be a dress that the actor's wife had bought.

And being very familiar with the script, I thought that it was wrong for her character and his character.

So I -- the director could not win the argument. I had to.

I might add, you know, that a director is usually higher on a free-lance basis, whereas the producer and the associate producer, we are responsible for the entire creative content of the series.

So very often a director asks us to mediate or make a decision.

Another good example might be that actors very often will come to a set -- let's say they are supposed to be a L.A. policeman; and an actor reports to the set with hair longer than mine.

We try to be factual. L.A. policemen do not have hair as long as mine.

And the actor is asked to submit to a haircut.

And if he doesn't, of course, we have to replace him. And a director is very often too busy involved in getting the show out on schedule that sometimes he will miss things like that.

And that is why one of us tries to be on the set.

These things come up all the time. I won't bother to corroborate what Mr. Swerling state previously, but there are many problems with especially the star of the series.

Now, getting on to post-production. I am involved in post-production in cutting and dubbing and looping of the

actors.

That is primarily my responsibility.

Looping is re-recording their voices.

Very often the lead in a series will object when I ask him to read a line differently in looping.

I have to hopefully win the argument.

In dubbing, which is quite involved, I supervise that; and I might add that for the average one-hour show, which is six reels or six sound effects editors, they are all supervised by one of the six, or sometimes less, dialogue editors, and three or four music editors.

They all must be supervised very closely, because we are responsible for the final outcome of the show.

I won't go into the answer print too much, but just to say that one of us at least has to be there.

And --

Q Could you define an "answer print?"

A The answer print is the finished product. I don't know how it got its name.

Someone said to answer any question that might previously have been asked about the production. It is the composite print -- the striking of the first composite print.

More often than not, there are color corrections to be made, which we -- if they are not obvious, we would ask for them -- or if they are obvious, we would ask for them too.

But usually the corrections we might make are a scene that is printed for night that comes out day, for instance.

You hear crickets in the middle of the daytime, and it might be a little bit disarming to an audience.

The technicians at the studio at the lab wouldn't know anything about that. So we would --

Q Are you a member of the Writers Guild?

A Yes, I am.

Q All right.

And how long have you been a member?

A Almost two years.

Q Did you receive the strike rules?

A Yes, I did.

Q All right.

MR. LE VINE: I have no further questions of this witness, your Honor.

MR. KEATON: I would like to offer the stipulation that if Mr. Heilpern were asked he would testify that he attended the meeting which is alleged in General Counsel's complaint, Article 11, and admitted by the Guild; at which meeting Mr. Michael Franklin, executive director of the Guild, said in substance that the strike rules would apply to members such as Mr. Heilpern, irrespective of what capacity they would be working in.

JUDGE: Gentlemen, do you agree to that stipulation?

Q All right.

A I hadn't really been to any Guild meetings.

Q This was your first meeting?

A This was my first meeting, yes.

And from what I could ascertain, they represented hyphenates in the negotiations.

Q I see.

Now, did Mr. Franklin speak at that meeting?

A Yes, he did.

Q And do you know Mr. Franklin by sight?

A I don't know him personally; I know him by sight, yes.

Q All right.

Now, what did Mr. Franklin say with respect to the strike rules, if anything?

A Well, it was -- as I recall, it was in the form mainly of questions that were answered by Mr. Franklin and others.

But the information that came out was that --

Q From whom?

A From Mr. Franklin, that first of all a picket line was not only physical, but it was symbolic.

Q What did he mean by that? Did he explain?

A Yes. Like if I wanted to meet with a writer, let's say, or talk about a show outside of the studio, I really couldn't do it if it was in the line of work.

That is what he meant by a symbolic picket line.

There are other examples, perhaps better ones than that, but in other words, it wasn't just limited to the physical picket line around the studio.

And even more important than that, from our point of view -- the hyphenates' point of view -- was that the question was asked --

MR. GOLDMAN: Excuse me.

Can I ask that the witness speak only from his point of view and not others?

JUDGE: Do you understand the objection?

THE WITNESS: Yes, I do.

JUDGE: You are now talking about what Mr. Michael said?

THE WITNESS: Right.

JUDGE: Well, let's not characterize as to whether it was important or not important.

Go ahead.

THE WITNESS: Another statement made I believe, by Mr. Frankline, was that if a producer or an associate producer or an executive producer only had to dub a show to finish completion of his services on the show, he could not cross the picket line to do that once the strike started.

Q (By Mr. Keaton) Even though he would be doing no writing whatever?

A Yes, because that question was asked -- one producer

would ask about editing and another producer would ask about another phase of production, having nothing to do with writing.

And the answer was always very simple: "If you are a member of the Writers Guild, you cannot cross the picket line."

Q Including that symbolic picket line?

A Including the symbolic picket line.

MR. KEATON: That's all I have.

JUDGE: Mr. Fisher?

MR. FISHER: No questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Goldman) You say you became a member of the Writers Guild two years ago?

A Yes.

Q What prompted you to become a member of the Writers Guild?

A I performed rewrite services on an episode of "The Bold Ones," and for which a single picture contract was executed by me.

And even though I didn't have to join at the time because of the Taft-Hartley Act, I felt I would be doing more rewriting wervices, so I did join at the time.

Q All right.

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And did you do more rewriting services?

A Yes. Subsequently I have done two more rewrites and a polish.

MR. GOLDMAN: May I have Mr. Heilpern's affidavit?

MR. LE VINE: Yes.

MR. GOLDMAN: Let the record show I am handing the affidavit back to General Counsel.

Q (By Mr. Goldman) Mr. Heilpern, you say you are employed week to week pursuant to an oral agreement with MCA?

A That is correct.

Q All right.

And what you have described with respectto the duties a nd obligations of an associate producer, where you are currently employed, and have been employed for some time -- strike that.

You stated that your duties because of your particular production unit are perhaps somewhat different than other associate producer's duties.

Is that correct?

A That was a surmise on my part. I don't really know how they operate in other units.

What I really meant to say was that in my particular unit, I am involved in every phase of production.

Q All right.

PROCEEDINGS

ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

Mr. LeVine, are you ready to proceed?

MR. LE VINE: Yes.

We will call Mr. Dave Freedman.

Whereupon,

DAVID FREEDMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A My name is David Freedman.

Q What is your address?

A My address is 14826 McCormack Street, Van Nuys.

Q Where are you employed?

A Paramount Television.

Q And what is your position?

A I am vice-president of Business Affairs.

Q All right.

And how long have you held this position?

A At Paramount, one year.

Q All right.

And what are your duties in that position?

A My duties are to negotiate all network deals, talent

The producer is his counterpart. Generally he is totally responsible to the executive producer who is more active in the physical day-to-day making of the television series; guiding it, selecting people and so on.

The third --

Q The associate producer?

A The associate producer is a direct assistant to the producer, who also for the most part, carries out his orders, tends to the scheduling, has the liaison with the Production Department, and for the most part works in post-production which is after principle photography has been completed.

He assists the producer and the executive producer.

He assists the producer and the executive producer.

Q All right.

And does the producer function have the power to either hire or --

MR. GOLDMAN: I object. It is leading.

MR. LE VINE: I don't believe that that is.

JUDGE: Yes, it is.

You may ask -- you don't have to adopt to this suggestion, but you may ask him what authority, if any, the -- these functions have with respect to certain employee relationships.

Q (By Mr. LeVine) All right.

Could you tell me what authority, if any, does the executive producer have with respect to hiring of employees?

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A He has a great deal of authority. It is his shared but almost unchallenged authority to do the hiring and firing of the above-the-line people.

Q Who would he hire?

A Writers, actors, directors, in many instances the producer, story editor.

Q All right.

What authority, if any, does the producer have with respect to the hiring of employees?

A He shares that authority except in the most important areas.

He could hire or fire without the approval of the executive producer being specifically sought.

Q All right.

What authority, if any, does the associate producer have with respect to the hiring of employees?

A That would be more limited. I would think that his recommendations and his ability to hire would be prescribed to the lesser important decision than a producer, and executive producer need not be exposed to.

Q All right.

Do grievances arise in the production of television films?

A Grievances?

Q Yes.

A Differences of opinion?

Q Problems involving employees?

A Yes.

Q All right.

What authority, if any, does the producer function have with respect to grievances?

MR. GOLDMAN: Your Honor, --

Q (By Mr. LeVine) -- to the handling of grievances?

MR. GOLDMAN: -- I would like to object to this question since there are three producing functions: there is the executive, there is the producer and the associate producer.

Can we take them step by step as opposed to lumping them all together?

It would be a more intelligent record.

MR. LE VINE: We can take it step by step.

Q (By Mr. LeVine) All right.

Now, what authority, if any, does executive producer have with respect to the adjustment of grievances that arise in the production of a television film at Paramount?

A He has authority to settle those and to make suggestions to clear differences between individuals on the show -- people that are hired.

He has meaningful authority.

Q What authority, if any, does the producer have with

respect to the adjustment of grievances that arise in the production of television films at Paramount?

A The same authority as executive producer has, except that the executive producer -- he answers to the executive producer and will in the absence of the executive producer, or in his discretion, either consult with the executive producer or not.

If there is a problem that has to be solved immediately, he will solve it immediately.

Q All right.

What authority, if any,does the associate producer have with respect to the adjustment of grievances as they arise in the production of television films?

A The associate producer also has authority to solve these problems, but it would be more concerned with his own area of operations -- an actor-director relationship.

The associate producer can bridge that and make suggestions. Clear the air.

Q All right.

Could you tell me what the duties of the director are in the production of television films at Paramount?

A The duties of directors are two.

He will direct the creative intent of the script and transcribe it onto film before the camera by directing the action of the particular script his particular way in concert

with the Production Department requirements.

He will pace it correctly, he is to interpret the writer's orders, to give a flow to the episode, and to make it as -- transcribe it from the script to the screen by the use of the actors and the technical people, etcetera.

Q What authority, if any, does the director have with respect to hiring employees?

A The director has influence in the hiring of employees.

"Authority," well if he really demands it, and there is a difference of opinion, he may prevail, but not necessarily has he the authority to prevail.

Q All right.

Can he recommend the hiring of a certain person?

A Oh, absolutely.

Q What types of employees would he recommend the hiring of?

A Actors, stunt people -- I guess they are actors, cameramen, although it is rare that a cameraman would be changed to accommodate a director -- could happen at the beginning of the season, and even writers in instances.

JUDGE: Mr. LeVine, let me break in here.

If you follow me, when a person recommends to someone higher than he, that another person be employed -- hired -- that recommendation could carry several degrees of weight.

It could be -- have no more weight than a suggestion,

or it could carry the weight that the person who was actually doing the hiring would say, "Well, we have to think about this," because of where it came from, or the person who is doing the hiring could say, "Well, if Joe wants it, it must be right; must be a good thing to do. We trust him in the position he holds and you have got to give considerable weight to what he says."

And the latter situation in this area of law, we talk in terms of such a recommendation having effective weight, or the person who is considering the hiring giving effective weight to the recommendation.

This ties in with the degree to which the person doing the hiring would overrule the recommendations based on the person -- the hire, using his own knowledge, experience or individual investigation.

You understand the picture I am giving you?

THE WITNESS: Yes.

JUDGE: All right.

Now, with respect to a director making a recommendation to -- who was he making the recommendation to?

THE WITNESS: Either the producer or the executive producer.

JUDGE: All right.

In the instance of the director making such a recommenda-

tion to the producer, what kind of consideration is his recommendation likely to have?

THE WITNESS: It is likely to have very serious consideration because of the director's personal experience with the recommendee.

JUDGE: All right.

In the terms that I use, would you say that the producer would give effective weight to the recommendation or something less -- I don't know whether you can give it any greater weight than that; what would be your estimate in your own operation?

THE WITNESS: Effective weight.

JUDGE: Go ahead, Mr. LeVine.

MR. LE VINE: All right.

Q (By Mr. LeVine) What authority, if any, does the director have with respect to the adjustment of grievances?

A He has a great deal of authority in that instance, because these -- there are all types of grievances; they come up on the spur of the moment, they sometimes are meaningful and they are sometimes minor.

He has a rigid schedule to follow or else it will involve the expenditure of a great deal more money due to the delay.

He will make on the spot solutions.

Q All right.

I think I can take that answer. Is that what you want, Mr. LeVine?

MR. LE VINE: Yes.

JUDGE: All right.

Q (By Mr. LeVine) What is the name of the function at Paramount?

A There are several names to the function, each having slightly different interpretations of duties.

We hire executive script consultants; we hire story editors; we hire executive story editors.

Do you want me to describe the functions in the different titles?

Q Yes, please do.

A Executive story consultants sometimes do the same thing as a story editor, depending upon the deal that is negotiated with them up front.

If they are exclusive to the television series, they will do the functions that a story editor normally does; which I will describe in a moment.

If they are executive story consultants on a non-exclusive basis -- that is, they may be working on another series in another studio elsewhere, or developing a script elsewhere, where the services are not exclusive to that series, they are in a more pure consultant capacity.

Now, the consultant will read first drafts and completed

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scripts.

They will see the rushes of the individual episodes. They will attend screening for network executives. They will attend rought cut screenings.

They will be used almost in a story executive producer basis as a -- as would a non-exclusive consultant in other industries.

A story editor and/or executive story editor on an exclusive basis, will devote full time to his duties in connection with that particular series.

And his function would be to secure writers, listen to writers read story lines, suggest to writers who are employed the direction to take in this particular script, or because of this particular series has this particular long-range objective, and he maintains the integrity of the continuing character he works with writers from the beginning stage to the final stage when the script is ready for production.

And he does some rewriting -- polishing -- of his own.

Q All right.

What authority, if any, does the story editor, executive story editor, function have with respect to the hiring of employees?

A He is able to hire writers, assign projects on his own, and he usually confers with the producer and/or the

executive producer, recommending that it be hired.

But he can commit.

Q What authority, if any, does the story editor or the executive story editor have with respect to the adjustment of grievances?

A That would be only that I can think of in terms of writing credit, ameliorating writers' feelings when things have to be rewritten, and the writer cannot grasp the reason for rewriting it.

He can exert influence in the settling of those grievances.

Q All right.

What athority, if any, does the executive story consultant have with respect to the hiring of the writers or the hiring of any employees?

A If the executive story consultant were on an exclusive basis to the studio, in devoting his full time to the series he would have greater authority in that area.

He also has the authority even though not on an exclusive basis, for bringing writers to the series, hiring them to do the series, and working under the working story editor if there isn't a working story editor per se under the producer.

He would use great influence in securing the best writers particularly suited to this particular kind of a series -- the one he is working on.

title -- but in the development of MOW's long form television series projects -- development.

Q All right.

Are you familiar with -- were you familiar with Mr. Levy's contract?

A Yes.

Q Personal service contract?

A Yes.

Q With Paramount Television?

A Personal service through his company.

Q What company did he have? Do you know the name of his company?

A I don't remember the name of his company.

Q All right.

Now, this was a company that Paramount Television had an agreement with, and his company -- or that company -- loaned out the services of Mr. Levy to Paramount Televisbn?

A Yes.

Q Is that what you are referring to as the typical loan-out agreement?

A Yes. Where the services of the individual --

Q The services of the individual?

A -- are of the essence to the agreement.

Q With respect to Mr. Levy's -- your company's arrangement with Mr. Levy's company, was there an arrangement which included

the function of writing?

A Yes.

Q All right.

Let's go to Ivan Goff.

Is Mr. Goff -- does he have a direct contract of employment with Paramount Television, or does he -- is he employed by a company which is lent to you?

A I don't know that offhand.

Q Ben Roberts?

A I don't know that either.

Q Paul Playdon?

A His agreement with us, I believe -- I'm not sure -- is direct services.

Q Direct service contract?

A I believe so. I'm not absolutely sure.

Q Is part ~~of that contract that~~ he has with you -- does it cover writing services and functions?

A Yes.

Q All right.

How about Jerry Ranow? Is that a direct contract with you, or a loan-out arrangement?

A Again, I believe that is a direct services agreement.

Q And in this direct services agreement, was there some writing function included in that?

A Yes, there is.

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Q How about Craig Strangis?

A Yes.

Q Direct services contract?

A I believe so, yes.

Q And part of that direct service contract would have included in it, writing functions?

A Yes.

Q How about Ed Scharlach? Is that a direct services contract?

A I don't know.

Q It would be either a direct service contract or one of those loan-out contracts?

A I don't know which one it is.

Q All right.

Would you know that whatever it was, that it required him to perform some writing functions?

A Yes, that I know.

Q And when we are talking about writing functions, we are talking about polishes, touch-ups and those functions other than the A through H function.

Do you understand that, sir?

A Yes.

Q And your answer is "yes," that is what we are talking about when we are talking about writing functions?

A Yes.

Q How about Bernie Orenstein? Is that a direct service contract or a loan-out?

A I believe that is a loan-out -- well, let me amend that.

One of those two, either Turtletaub or Orenstein, is a direct services.

The other one -- and I don't know which the other one is -- I believe the company is supplying the services.

Q All right.

Now, you said that you are considering them to be employed by Paramount Television.

Is that correct?

A Yes.

Q But their services are to be performed in the future?

A Yes.

Q All right.

And when you say their services are to be performed in the future, is it the fact that they do not want to cross the picket line the reason why their services are not being performed --

MR. LE VINE: Objection, your Honor.

That is completely speculative.

MR. GOLDMAN: Well, unless he knows --

MR. KEATON: It is irrelevant and immaterial. And furthermore, it is designed simply for the Guild to discover who is working in order to be able to sanction a few --

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MR. GOLDMAN: Well, we don't have to discover who is workIng.

Mr. Orenstein is an ardent supporter of the strike.

I think I am entitled to know from this gentleman. And itgoes to our very issue in the Ninth Circuit case, that in the course of a strike, can a union threaten discipline of its supervisors crossing the picket line?

And the question is whether or not these people are doing it on their own, or they are threatened.

We want testimony of a number of these people that they are on their own not wanting to cross the picket line.

MR. KEATON: Your Honor, we haven't seen the Ninth Circuit case yet, but the description that I have of the case -- I don't think Mr. Goldman has seen it either -- but the description I got in this office based upon a phone call was that the case simply holds that a supervisor who voluntarily belongs in a labor organization, can be disciplined under the circumstances of that particular case.

Now, none of us have looked at the Board decision. It is an ITU case.

And the evidence shows already that the people who belong to the Guild do not belong voluntarily.

A man that tried to withdraw was not allowed to.

And I don't think we should be permitting the Respondent here to engage in a fishing expedition as to who is working

and as to who isn't working.

If Mr. Orenstein is in support of the strike, I suppose counsel for the Guild can put him on the stand and have him so testify, and we duly object.

JUDGE: Mr. Keaton --

MR. GOLDMAN: Your Honor --

JUDGE: Just a moment, please.

I am not going to rule in respect to any other person or any other situation.

But in this particular situation, the witness has already testified on direct with respect to the employment status of these two gentlemen.

I put it that generally.

He stated what the conditions of their employment were, and when they were likely to start work and the reasons they were likely to start work.

Now I have to permit Respondent's counsel to test that testimony.

And that apparently is what he is doing.

Mr. Goldman, I would appreciate it if you would repeat your question.

MR. GOLDMAN: Yes, sir.

Q (by Mr. Goldman) Mr. Freedman, you stated that as to Mr. Orenstein, and Mr. Turtletaub, you considered them to be employed by Paramount Television; however, their employment --

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strike "employment" -- however, they were not actually doing anything because the project they were employed for has not commenced.

It is to commence some time in the future; is that correct?

A That is correct.

Q All right.

Now, is one of the reasons for the projects not starting at this point in time because Mr. Orenstein and Mr. Turtletaub are honoring the picket line?

MR. KEATON: I renew my objection.

JUDGE: Mr. Freedman, would you go out that door, there where you can't hear what I am getting ready to say, and we will call you in certainly not more than two or three minutes.

(Witness excused.)

JUDGE: All right.

Now, Mr. Goldman, my problem runs as follows: it may well be that this company is delaying the start of many projects, including this one, because of the strike.

And I would be inclined to think that that might be a legitimate question.

The problem I have is that you are putting it in terms of these two particular people; and I consider that those two situations are entirely different.

And I am gong to sustain the objection of General Counsel and the Charging Party to your question.

But I want it to be done in terms so you understand why. And I didn't want it so the witness could hear.

I am not precluding you from going into the reasons why -- if it is a fact, and I don't know it is a fact yet -- that Paramount may be delaying the project.

But I can't see any reason for permitting you to ask whether it is because these two people may be on strike.

MR. GOLDMAN: Fine, your Honor.

I will accept that.

JUDGE: I would say two other things: you see, these two men so far as I know, as of the time of the strike, started were not performing services for this company.

So, as to this company, there is substantial issue as to whether these two men are on strike against this company.

And the company may be delaying putting that problem to the test by not asking them. But that is different.

That in my mind, indicates that the company was just not going ahead because the strike was in existence.

MR. KEATON: Your Honor, may I ask one question?

I, of course, will have to accept your ruling, but in what way is it possibly relevant to this proceeding whether Paramount or any other studio is delaying a project by virtue of the strike?

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JUDGE: Mr. Keaton, I have already told you that as a general rule, I might agree with you.

The problem is that the witness on direct examination, said these two men are under contract, and the reason they haven't done any work for Paramount is that the project for which they have been contracted, has not started.

Now, once he said that, Respondent may within certain limits ask, "Why hasn't the project started?"

MR. KEATON: Your Honor, I think there is a misapprehension.

There are many projects in the motion picture industry that would not have started on February 1, which has absolutely nothing to do with this strike.

And the mere fact that he said he hasn't started on February 1, does not show that General Counsel opened up the question whether the strike delayed it.

The fact of the matter is until the networks select product, there are quite a few things that don't get started in this business.

JUDGE: Mr. Keaton, I think this argument is not getting us very far.

The chances are fairly good that when the witness was asked, he will say -- he might very well say, "The project hasn't started because we are not ready."

I don't know what he is going to say.

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Will someone call the witness back?

MR. KEATON: The question asked was whether it was started because of the strike --

MR. GOLDMAN: Excuse me.

The witness is here. I don't think this commentary should be taken --

JUDGE: All right.

I will meet objections as we get to them. Mr. Freedman, I have ruled that you don't have to answer the last question.

Go ahead, Mr. Goldman.

MR. GOLDMAN: All right.

Q (By Mr. Goldman) With respect to Mr. Orenstein and Mr. Turtletaub, Mr. Freedman, when were their services to commence?

A Approximately four weeks prior to commencing of the principle photography.

Q All right.

When was principle photography to commence?

A We have not set a date.

Q And why is Paramount delaying the project and why have they not set the date?

A I did not say we were delaying the project.

Q Why has Paramount not set the date for principle photography?

A It hasn't -- we have not established our production

schedule yet for all series.

Q For all series?

A Yes.

Q All right.

Now, why haven't you established your production schedule?

MR. KEATON: Objection.

It is irrelevant and immaterial and going beyond the scope of direct and not within the framework of the pleadings.

And is designed and calculated to provide the union with information about the employer's plans in the strike.

JUDGE: All right.

I will sustain that. Do you want to make an offer of proof?

MR. GOLDMAN: No. That is all right.

I will go on to others.

Q (By Mr. Goldman) Is Ivan Goff currently employed?

A He is under contract to us, yes.

Q Well, Mr. Orenstein and Mr. Turtletaub, are they under contract to you?

A Yes.

Q And does the same situation hold true with Mr. Goff as it does with Mr. Orenstein and Mr. Turtletaub?

A What is the same situation?

Q That you just described?

JUDGE: Are you asking that they have not started work because a schedule has not been established?

MR. GOLDMAN: Yes.

THE WITNESS: Schedule has been established for the series that they are to render their services on.

Q (By Mr. Goldman) Has Mr. Goff started work?

A No.

Q All right.

Let's go to Mr. Roberts --

MR. KEATON: I will object to that, your Honor.

We are now doing piecemeal what you ruled earlier we were not going to do.

He --

MR. GOLDMAN: Your Honor --

MR. KEATON: -- is arguing as to each witness, whether he is working, and I think it is outrageous for him to try and find out who is crossing that line.

MR. GOLDMAN: Your Honor, General Counsel and Mr. Keaton on direct, brought out the fact that these people were employed as of February 1 : --

JUDGE: Gentlemen, I don't want to get in too much argument about it.

It is a legitimate inquiry as far as I know during the course of a strike, to determine who is working and who isnt

working, as long as that is relevant to the issues.

Mr. Goldman, will you give me a little help as to the relevancy of this point?

MR. GOLDMAN: Yes, your Honor.

It is very simple. If Mr. Orenstein and Mr. Turtletaub were eliminated from the list as not being employed and if Mr. Goff falls in the same category as Mr. Orenstein and Mr. Turtletaub in that he is not working, how have we, as a union, committed 8(b)(1)(b) conduct towards those people that are not employed by the company?

Or are they just sitting out there in some nebuluous term of "never, never land," or do they have to actually employed by the company, working?

Mr. Orenstein and Mr. Turtletaub are not, and it turns out that Mr. Goff isn't.

JUDGE: Well, you haven't established that Mr. Goff is in exactly the same position as the other two.

MR. GOLDMAN: Well --

MR. KEATON: May I be heard for just one moment?

We have established at this point, that Mr. Goff and all the people on this list other than Mr. Orenstein, and Mr. Turtletaub, were working as of February 1, 1973 and thereafter.

I submit it is not within the pleadings of this case to establish by anyone whether the strike rules of the Guild have been effective or ineffective; that is not an issue before

the Board.

And if these people were in fact working, it doesn't make a dilly dee of a difference whether they are working today.

And that is what counsel is asking for.

JUDGE: Gentlemen. Mr. Goldman, that was my point. You haven't established that anyone but Orenstein and Turtletaub were in a special position.

The others will testify -- were identified as having been employed on February 1 and continuously thereafter with the exception, I think, of Mr. Levy whose term of contract expired.

MR. GOLDMAN: All right.

JUDGE: So let's go on, please.

MR. GOLDMAN: Well, let me -- I would like to finish -- getting back to -- all right.

Q (By Mr. Goldman) Let's get back to Lawrence Heath.

Is Mr. Heath under a direct service contract, or loan-out agreement?

A I am not sure.

Q Whether it is a loan-out agreement or a direct service contract, Mr. Freedman, are you familiar with or have any knowledge of, what is encompassed in either of the agreements?

A In Mr. Heath's agreement, yes.

Q All right.

Does part of the agreement cover the writing functions?

A Yes.

Q Howard Leeds; is he on a loan-out or direct service contract?

A I cannot remember.

Q All right.

Now, with respect to Mr. Keeds, do you have any knowledge concerning his contractual status,in that it covers writing functions?

A Yes.

Q It does cover writing functions?

A Yes.

Q Skip Webster; loan-out or direct service contract?

A I believe Skip Webster is direct services.

Q And does his contract provide for the writing functions?

A Yes.

Q Sherwood Schwartz; direct service contract or loan-out?

A That is a loan-out.

Q And do you know who it is a direct loan-out with?

A Redwood Productions.

Q What is the name of that?

A Redwood Productions.

Q All right.

And do you know if Redwood Productions has any other employees?

A I don't know.

Q Part of that arrangement between Paramount Television and Redwood Productions calls for the use of Sherwood Schwartz writing functions?

A Yes.

Q Gary Marshall, direct service contract or loan-out?

A I am reasonably certain it is a loan-out.

Q Do you know the name of the company?

A No.

Q All right.

Would that agreement have a provision in it for writing functions?

A Yes.

Q Jerry Belson; direct service contract or a loan-out?

A I don't know.

Q Would you be familiar with -- you have knowledge of the fact that whatever contract it is, there is a provision for his writing function?

A Yes.

Q All right.

Now, I believe you stated Ivan Goff was employed as of February 1st, 1973, by Paramount Television.

Is that correct?

A Yes.

Q Was he actually working at the time?

editors in either of those two capacities.

And not necessarily in the same capacity -- being both at one time.

Q All right.

Now, script consultant, I take it, would be the same thing as a story consultant or executive story consultant?

A Embracing generally the same duties, yes.

Q All right.

You described, sir, to us I think earlier, the definition of executive story consultant, story editor and executive story editor.

And is it your testimony now that script consultant would embrace the same functions as those three that we have just described?

A Yes, generally.

There are nuances of differences; it has to do with individuals rather than --

Q Does it go to the matter of the title as opposed to the actual functions -- the difference -- the main difference?

A Yes, the ego more than the title.

Q All right.

So now included in the script consultant's functions are the duties to rewrite and polish and the writing functions that we have described before?

Is that correct?

AFTERNOON SESSION

2:00 P.M.

ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

Mr. LeVine, do you want to call your next witness?

MR. LE VINE: Yes.

I will call Frank Paris.

Whereupon,

FRANK PARIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A Frank Paris.

Q What is your address?

A 14220 Terrabella in Arlita.

Q California?

A Yes.

Q Where are you employed?

A Walt Disney Productions.

Q What capacity are you employed in?

A Executive story editor.

Q All right.

And how long have you held this position?

A Six months; and three and a half years prior to that I was the associate story editor in the same department.

Q Do you have a personal services contract?

A No.

Q How are you employed?

A How was I employed?

Q How are you employed?

A On a week-to-week basis.

Q All right.

And what are your duties?

A Well, as the head of the Story Department, I am in charge of finding literary material to be produced as motion pictures or television for our television series.

I am also in charge of recommending writers to producers for any open writing assignments.

I am responsible for negotiating the purchase of literary property and am responsible for negotiating the salaries of writers that we hire.

I am the title registrar for the company; and as the head of the Story Department, I am responsible for all operations in the Story Department in Burbank, New York and London.

Q All right.

What authority, if any, do you have with respect to hiring writers?

A No authority to actually hire a writer. I recommend writers to producers on open assignments.

And they make the decision whether or not they will hire a particular writer.

Q Based on your recommendation?

A Yes. Because unless a writer comes to them from the outside or someone that they know personally, they look to me to recommend a writer for an open assignment.

And I usually recommend two or three.

And I sit in with the interviews with the producer and writer. And after that interview is over, we compare notes and thoughts, and the producer makes his decision.

Q Does he take your recommendations?

A Many times, yes.

Q All right.

What authority, if any, do you have with respect to adjusting grievances?

A Only as a mediator. If a writer has a problem more likely than not, he will come to me, because I am the first person he meets in the studio.

And I am the person who keeps tab of what he is actually doing because my department is also responsible for reporting his employment to the Personnel Department, to the Payroll Department; we handle all the contracts; we file all the contracts, we keep all the employment papers for writers in

my office.

And so, I have a very close association with writers. And if he has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out.

If the producer decides that the writer is not working out, he will ask me to tell him and it will be up to me to let the writer go.

Q All right.

Are you a member of the Writers Guild?

A Yes, I am.

Q Are you an active member of the Writers Guild?

A No, I am not. I am an associate member.

MR. GOLDMAN: Your Honor, the last question that was asked was: "Are you an active member of the Writers Guild?"

I would have to object to his answer as being non-responsive, in the sense that I don't know of any category of active members.

An active member can denote one that is active in the Writers Guild as such, or a status of membership in the Writers Guild; and I think it is not too clear as to what the question was or what the response was to it.

There is a current member and an associate. And if Mr. LeVine was referring to the status of the current member and associate, I would like to just get the record straight.

JUDGE: All right.

You were asked to explain.

THE WITNESS: Yes.

As an associate member, I cannot vote on any Guild matters.

Q (By Mr. LeVine) All right.

MR. LE VINE: Can we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Do you want to proceed, Mr. LeVine?

MR. LE VINE: Yes.

Your Honor, we will offer to stipulate -- General Counsel would offer the stipulation that Frank Paris, executive story editor, at Walt Disney, is told by Carey Wilbur, an agent of the Guild, that if he crossed the picket line, he would be subject to penalties by the Guild, and he could be penalized to such an extent that no writers would work for him.

And this was in a telephone conversation.

We would further offer the stipulation that on April the 9th, a notice of disciplinary hearing in charges charging Mr. Paris with crossing a Guild picket line at Walt Disney Productions on or about March 6th for the purposes of rendering services for Walt Disney Productions, which company was

at the present time, on the Guild strike list, was filed by the Guild and sent to Mr. Paris.

And that a hearing -- has taken place -- a hearing took place on the charges on -- what date -- on May 24th, 1973.

JUDGE: Do you agree with that stipulation?

MR. GOLDMAN: Yes, except for one thing.

I would like to have the date when the alleged telephone call was made to Mr. Paris.

MR. LE VINE: All right.

It was February the 22nd.

JUDGE: Is that your stipulation?

MR. LE VINE: Yes, it is, your Honor.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, I will so stipulate, except to the facts that the trial has been adjourned to a date uncertain in the future on disciplinary matters.

JUDGE: You were saying that with respect to Mr. LeVine's statement, as to the trial, that the trial has not taken place?

MR. GOLDMAN: It was scheduled and it was adjourned to a date uncertain in the future at this point. And that took place yesterday -- that adjournment.

JUDGE: Do you accept that, Mr. LeVine?

MR. LE VINE: Yes, I would, your Honor.

JUDGE: Do the rest of you gentlemen agree?

MR. KEATON: I am unclear what he means by "adjourn." Did it commence yesterday?

MR. GOLDMAN: Yes. It commenced and was recessed to the date --

JUDGE: Do you gentlemen join in the stipulation?

MR. Keaton?

MR. KEATON: Yes.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

MR. MILLER: Yes.

JUDGE: All right.

The stipulation is received.

Q (By Mr. LeVine) All right.

Mr. Paris, in connection with your duties at Walt Disney Productions, would you be familiar with the people -- with the various people holding the titles of producer, story analyst, animation story producer, director and animation director, administrative executive?

A Yes, but only writers come under my jurisdiction.

Q But would you be familiar with these people?

A Yes.

Q All right.

I am going to show you a list -- General Counsel's

or memorandum, Mr. LeVine?

MR. LE VINE: For Mr. Paris, yes.

JUDGE: Mr. Goldman, how much time would you require?

MR. GOLDMAN: Well, this one is about two and a quarter pages long. I would like to have about five minutes.

JUDGE: All right.

We will be in recess until 20 minutes past 2:00, which will give you somewhat more than five minutes.

MR. GOLDMAN: Thank you, your Honor.

(Short recess taken)

JUDGE: On the record.

Do you want to proceed, Mr. Goldman?

MR. GOLDMAN: I have no questions.

Let the record show I am handing back the affidavit of Mr. Paris to the General Counsel.

JUDGE: Mr. Paris, you are excused.

Thank you very much.

THE WITNESS: Thank you.

JUDGE: Call your next witness.

MR. LE VINE: I will call Mr. John Mantley.

Whereupon,

JOHN MANTLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A John Mantley.

Q What is your address?

A 4121 Longridge Avenue, Sherman Oaks, California.

Q All right.

And where are you employed?

A At CBS, Studio Center.

Q And in what capacity are you employed?

A As executive producer of the television show "Gunsmoke."

Q All right.

And how long have you held this position?

A I believe I have been executive producer for five years.

Q And could you tell me what your duties are as executive producer?

A Well, I did first substantially more than 6,000,000 dollars every year -- CBS's money -- to create 24 episodes of Gunsmoke.

In addition to that, I supervised every phase of Gunsmoke production.

I began with a story idea which emanates either from me or from a variety of writers that I employ.

And with the assistance of my executive story consultant, and my producer, I develop from those seeds of ideas

finished scripts which may be translated into one-hour television vehicles.

Once those scripts are assembled, I hire directors to make those scripts.

I also decide with the help of my producer, where and when these episodes should be shot, which directors should shoot which episodes, and in consultation with the director and the rest of my -- and my producer, I decide what actors shall appear in what roles in those episodes.

Finally, I supervise the direction -- that is, I view the dailies each day and discuss with the director, the direction in which the work is proceeding, whether we agree it is in the right direction or not.

Finally, I view rough cuts and consult with the editors about what changes should be made.

I hire the musicians who will score these episodes. I supervise the dubbing of these episodes.

And I finally have the final say on what the answer print will be; which means the final version of the show which is presented to CBS to be put on the air.

I am also instrumental in consultation with CBS in deciding which episodes shall play first, and what order they shall play during the season.

Q All right.

Now, what authority, if any, do you have with respect

to the adjustment of grievances?

A Well, I would say almost total authority. Do you want examples of that?

Q Yes, please.

A Well, there are many.

I suppose there is one, for example, at the moment that is a bit complicated, but I will make it as brief as possible.

CBS Cinema Center Films made a very excellent film called "Little Big Man," and they shot a substantial amount of footage on a magnificent sequence which was the massacre of Indians in an encampment with many calvary men and so forth.

There was a great deal of footage which was not used in that film and which CBS Cinema Center Films had.

And it occurred to me that it would make a very interesting Gunsmoke episode if we did the story of the man who led that raid; and as the man who dropped the bomb on Hiroshima, he was in atterrible emotional state for many years -- or one of the men was.

So we developed that story after CBS Cinema Center Films had agred that we could buy some of that stock footage to use, so that in moment of aberration, he would remember, and we would use subliminal cuts of that massacre.

And after the film had been cut, Program Practices came

into it and desired that we remove several cuts because to their eye, they appeared too violent.

The film was then aired. And I received from the stuntmens Union a demand for $25,000 in residuals -- payments for the so-called stunts which appeared in that episode.

Since the cuts were almost subliminal and it was necessary even for the stunt men to stopframe on a movieola to discover what the stunts were and who was doing them, I refused to pay that.

And I demanded that this particular controversy go to arbitration.

It has not yet been settled.

Is that what you mean by "grievances?"

Q That is one type of grievance.

Do other grievances arise?

A Yes. Well, for example, if a director comes up to my office -- whIch has happened several times -- and says, "I simply cannot work with this cameraman," I must then go down to the set and try to resolve that grievance; otherwise the film stops.

And in one particular instance where this happened, I went down and the cameraman said "The director screwed up the dailies and he is just copping out; it is not my fault. The director said he couldn't get the proper shots."

So I said to the cameraman, "I suggest that when you are

asked to set up a shot, when you have set it up, you ask the director to look through the camera, and then ask him if he is satisfied with what you are getting."

So the dispute was thus resolved.

Another example of a grievance was when we were on the Rogue River last summer and we did a two-part episode, a stunt man had agreed to a certain sum of money -- I have forgotten precisely how much it was -- to do quite a dangerous leap from the top of the gorge into the river.

And we had underestimated by about 30 or 40 feet the height of that leap.

And the stunt man requested more money. He said, "It is more dangerous than you told me." And of course, I gave it to him. I thought he was entitled to that.

Is that enough --

Q I would say so.

From your -- based on your own experience with other executive producers, employed by CBS, do they have the same responsibilities that you would have?

A I would think so.

Q All right.

Are you a member of The Writers Guild?

A Yes, I am.

Q All right.

MR. LE VINE: Could we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back On the record.

MR. LE VINE: Mr. Reporter, could you please mark this as General Counsel's Exhibit next in order?

(The document above-referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q (By Mr. LeVine) Mr. Mantley, did you receive any communications by mail from the Writers Guild on or about April the 15th, 1973?

A Yes, I received many communications through that period.

Q All right.

And did you receive one on or about April the 15th?

A I think so.

Q All right.

I am going to show you what has been marked as General Counsel's Exhibit 7, which is a notice of disciplinary hearing and charges, and the specific charge, and ask you if you received this document in the mail.

A Yes, I did.

JUDGE: Mr. LeVine, are you offering that?

MR. LE VINE: Yes, I will offer that in evidence, now,

your Honor, as General Counsel's Exhibit 7.

JUDGE: Any objections?

MR. GOLDMAN: Well, your Honor, if Mr. LeVine will look at what he is offering to you, it includes more than what he has described for the record.

MR. LE VINE: That is correct.

MR. GOLDMAN: I have no objections to it.

JUDGE: Any objections to General Counsel's Exhibit 7 from the Charging Parties?

MR. MILLER: No objections.

MR. KEATON: No objections.

JUDGE: All right.

Hearing no objections, it will be received.

(The document above-referred to, marked General Counsel's Exhibit No. 7 for identification, was received in evidence.)

JUDGE: Mr. LeVine, will you for my purposes, tell me how many pages there are in No. 7, as I have received it?

MR. LE VINE: General Counsel Exhibit 7 is a three-page document.

JUDGE: That is the document to which you had no objection, Mr. Goldman?

MR. GOLDMAN: Yes, I have no objection; only the fact that I understand he will again furnish me a copy of it.

JUDGE: The same order previously made applies --

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MR. LE VINE: yes, your Honor.

JUDGE: -- that before the end of the hearing, Respondent is to have copies of all exhibits.

MR. LE VINE: I have no further questions of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: Your Honor, we would like to defer to counsel for the Networks.

JUDGE: All right, Mr. Fisher.

MR. KEATON: Excuse me, your Honor. I think that is Exhibit No. 8.

Mr. Paris was General Counsel's Exhibit No. 7.

JUDGE: Paris -- the document involving M. Paris was never offered.

It was described in the stipulation.

MR. KEATON: All right. I stand corrected.

JUDGE: Mr. Fisher.

CROSS-EXAMINATION

Q (By Mr. Fisher) Mr. Mantley, prior to commencing your duties, as executive producer of Gunsmoke, what was your experience in the industry?

A Well, I began in the industry as an actor. I then became -

Q When was that?

A Oh, my, that goes back. I would guess back in 1949 -- '48-'49 -- just after the war -- perhaps earlier than that --

I did not really write those scripts in their entirety. I rewrote them substantially and Mr. Meston objected.

Q That's all right.

You have had no writing credits since that time?

A None whatsoever.

Q All right.

And why are you a Writers Guild member?

A Because I am obliged to be.

Q Would you explain that answer?

A Well, when I became an executive producer, and was not taking any credit whatsoever for any writing that I was doing, and there was a minimal amount of it, I called The Writers Guild and said, "Why must I continue to pay dues since I am not getting any credit or any residuals and I am doing very little writing?"

And the person that I talked to at The Guild said, "You do do some writing."

And I said, "Yes, I do."

And she said, "In that case, you must be a member of The Writers Guild by the Writers Guild By-Laws."

And I said, "What happens if I decide that I don't care about that, and I don't remain a member?"

And she said, "In that case, no writers will be permitted to work with you."

Q All right.

Would you please describe the duties of the producers employed by CBS, to your knowledge?

A Well, I can't describe the duties of producers other than the producer, who works for me.

Q Well, why don't you do that?

A All right.

My producer is in total charge of a lot of areas of Gunsmoke.

For example, he holds all the production meetings. And in case those of you don't know what that is, prior to any show, it is necessary to get the heads of all departments together and decide at that production meeting what things will cost in various areas -- how much -- how much transportation will be needed, how much wardrobe, how much makeup, and all the rest of it.

And on the basis of production meetings budgets are cast.

Mr. Katzman, who is the producer on Gunsmoke, is also responsible for budgets.

He works out the budget on each show based on his work in the production meeting.

And then he brings that budget to me.

In most instances, I am entirely satisfied with what he has done and I approve the budget.

On one or two rare occasions, I have felt that the

budget was excessive and demanded thatit be reduced.

In addition to that, when we go on location, Mr. Katzman has the total responsibility for selecting locations, for selecting the places at which we will stay, for hiring local labor, carpenters, drivers and extras.

And the last show we did in Houston, for example, we had 140 extras -- local people -- and some hundred odd horses.

Q All right.

Do these -- making arrangements for labor on locations, does that involve negotiating contracts at all?

A Oh, of course it does.

Q And who would Mr. Katzman be negotiating with?

A Mr. Katzman would make the decision as to who he wanted, how many people he wanted in each case, and then would probably in most instances, then tell the production manager who is also on location, to make the deal.

He would be the one who decided.

Q Are these deals with individuals or with labor organizations, or what?

A Both. They would be labor organizations in the case of carpenters, and drivers for The Teamsters, but in the case of bit part players, or people who do small parts in the show -- and I would presume with extras -- they would be individual contracts.

Q All right.

Now, does Mr. Katzman have any other authority with respect to hiring or is it just on location that he is --

A Oh, no. He has -- I have great respect for his talent and ability.

And if Mr. Katzman comes to me and says, "I think we have a problem in this particular area, and I think this man should be replaced" in 99 cases out of 100, I will say "Then replace him."

Q Does Mr. Katzman -- let me ask you this: what authority, if any, does Mr. Katzman have with respect to termination of employees' services?

A I'm sorry. It seems to me that is the same question, isn't it?

Q Well, I asked you about hiring, I believe.

A Oh, well, the same thing applies in that case.

If Mr. Katzman comes to me and says, "I believe there is a serious problem here," for whatever reasons -- with drinking, or with absenteeism, or, what have you, then I will 99 percent of the time, accept his recommendation and tell him to do what he thinks is correct.

Q All right.

And what authority does Mr. Katzman have, if any, to resolve or settle grievances or problems which may arise in the course of the production?

A Well, substantial. I think any good producer tries to relieve his executive producer of as many responsibilities in the area of grievances as he possibly can.

Q Any particular examples come to mind?

A Well, there are many, you know. Occasionally, as we have heard here before, and I have heard, there is a problem with an actor on a set who is resisting direction.

And there is a conflict between him and the director, and the production is being held up, he will go down to the set and resolve that difference.

At least on occasion he discharged the actor in question.

And rightly so, I think.

Q Is there an associate producer on your show?

A There is indeed.

Q What is his name?

A Ron Honthaner.

Q If I can digress for a moment. Did you state Mr. Katzman's first name?

A It is Leonard.

I believe I did, but if I didn't it is Leonard.

Q All right.

Would you describe for us, Mr. Honthaner's duties and authority as an associate producer, please?

A Yes. If I may, an associate producer is a rather

strange word in our industry because it does not always mean the same thing.

On my show, as on many shows, but not all, an associate producer, Mr. Honthaner, is in total charge of the post-production area of the show.

That means that he is responsible for seeing that the dailies arrive on time; that they are properly printed.

Sometimes we get bad print jobs, too light or too dark, and so forth, and he is in charge of going to the lab to correct those deficiencies when they occur, and try to find out why they occur.

Once the dailies are put together, and I have approved a rough cut, Mr. Honthaner then takes the finished print and gives that print to the sound cutters and the effect cutters, and to the looping editor.

"Looping", if you don't happen to know that term, means that if you are on location and you have got an airplane flying overhead during dialogue, that's fine in a modern show, but in a western, you obviously can't use that.

So that dialgue has to be lip synced in the studio so that we eliminate that noise.

Sound effects have to be cut.

And Mr. Honthaner, once I have decided who the composer will be, shall attend the sessions wherein the places where the music will be placed, are decided upon; it is called

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"spotting."

He is responsible in that area.

He is also responsible for the entire dubbing operation. And "dubbing" means putting together of the dialogue, sound effects, the music and all the concommitant sound that goes with the print.

He is also responsible for the fades and disolves which are in the picture; responsible for the titles and for putting the cast credits on each episode.

And what he presents to me after I have approved the final cut of the film is what we call "one stripe," which is the work print of the film -- the visual work print with a single sound piece of film synchronized so that all the effects of the music and everything are there.

So in watching the picture, you have an effect of what amounts to the final picture, except that the color has not been corrected.

That largely encompasses almost totally his area of responsibility.

Q What authority, if any, does he have with respect to the selection of employees?

A Substantial.

Q And would you describe that for us, please?

A Yes. At the beginning of every year, we decide who shall be our sound effects cutter, and who shall be our music cutter,

and so forth.

Very often -- it has happened several times in the past few years -- Mr. Honthaner will come to me and say, "Look, we lost a lot of money last year because this particular man," and we won't specify who -- but one of the men involved in the post-production operation --" is inefficient.

He does not cut well and he does not anticipate. And I think we ought to replace him.

And in every instance where Mr. Honthaner has made such a suggestion, I have concurred and we have replaced that man; and always I think with excellent results.

Q All right.

And how would you go about replacing such an individual?

A Well, Mr. Honthaner would bring the recommendations of men whose ability he knows, and who he believes can do the job adequately.

It is an area of expertise which is far beyond mine; I know very few sound cutters or music cutters, for example.

Q The sound cutters and the music cutters, are these classifications covered by any labor agreements, to your knowledge?

A I'm sure they are. But I frankly don't know which one of these.

I'm sure that everyone who works at The Studb Center with the possible exception or the mail boy, perhaps, belongs

to some union or other.

Q What responsibility, if any, does the Associate Producer have for resolving grievances or problems which arise in the post-production process?

A He has the same responsibility as have other people in my employ who I have put in charge of departments.

Mr. Honthaner -- I don't believe he would ever fire anyone without my permission, although I think he believes he would have that right.

He does come to me and he has said on occasion -- I have told you about instances before the fact -- before the season began, but if it is of interest to you, I can give you a specific example that occurred during the season.

There is an unfortunate tendency in this industry to regard television as sort of the stepchild of the industry.

And pay scales are far lower in television than they are in the motion picture area.

And Studio Center -- Cinema Center Films at one time operated out of Studio Center, which is where we produce Gunsmoke, and there was a time when their people had very little to do --

Q "Their people," referring to the film entity?

A Yes. And I --

Q Motion picture film entity?

A That is right, yes.

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And I needed people -- additional sound cutters and effects cutters on Gunsmoke because I had done an elaborate location show which required a lot of that.

And the studio wished because these people were on salary -- the people that is, from the motion picture end of it -- wanted them employed.

So we put them to work in our cutting rooms.

When this happened, there was a great deal of controversy because the people from the film industry who were the assistants to my cutters, were making almost twice as much money as my people.

And my people complained that they didn't do half the work.

Mr. -- I would not be aware of this unless Mr. Honthaner came to me and said, "Look, we have an ugly situation on our hands. Our people are very dedicated and care quite a lot and they are upset because, first, the people who were working under them, are making a lot more money than they are, but they are particularly upset because these men take no pride in what they do.

"This is not their show and they don't care about it as we care about it.

"And I think these people ought to be replaced."

So I went to Bob Norvet, who is vice-president in charge of Studio Center here, and to Edward Dennault, who is

his assistant, and I said, "I'm sorry,gentlemen, I know what your problem is, but I want these people out."

And they were indeed replaced and the problem was resolved.

Q All right.

Now, would you describe for us, if you would, the duties of the executive story consultant on your program?

A Yes.

Q What is his name, first of all?

A Jack Miller.

Q Mr. Miller is in charge of the entire department --

A Which department?

Of Story.

Perhaps it is easiest to say that at the beginning of the year Jack and I and generally Mr. Katzman, if he has time, get together and decide what kind of stories we are going to reach for.

And we usually decide to try to attempt to find new writers for Gunsmoke, because I have a limited number.

I believe they are the best in the industry, but I keep losing them because they keep going to features, and I have to keep trying to replace them.

Mr. Miller makes recommendations to me about writers that he thinks might work with Gunsmoke, because for a great portion of the time in addition to his other duties, I require

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him to read material from other writers.

That is part of his functions.

So that he then says, "I would suggest Joe Smith and Jim Brown," and so forth.

And I say, "Fine, ask them to come in and see if they have got anything that would interest us."

Q "Jim Smith" and "Joe Brown" are people that he has selected out of a greater number of applicants?

A That is right. Out of the writers that are within his knowledge that he knows -- work he has seen because we don't bring anyone into the show unless we have read several of their scripts.

So we have some concept of what kind of ability they have.

So he then makes appointments with these men and they come in and they tell him stories.

And supposing, for example, that a dozen writers came in -- I think there were 15 or 18 this year -- out of that 15 or 18 writers, he came to me with three or four stories of which I believe I approved three.

I think he came to me with four and I approved three of the stories.

He then went back and put those three writers on assignment; the assignment being to the extent of an outline.

Q And did he make a deal with them at that point?

A Yes.

He makes out the forms and sends an official notification to Ann Nelson, who is in charge of that area of Business Affairs for CBS at TV City.

He sends them over under his signature an announcement that "Jim Brown" has been set to do an outline for Gunsmoke.

In addition to those duties, I have from CBS -- and to the best of my knowledge, I am the only television show in all of Hollywood which has this right -- the right to read unsolicited material.

It is normally returned unopened because of the danger of lawsuits.

Ever since I began with CBS, one of my stipulations for working has been that I be permitted to read this material because I find fresh material comes from this area, and many fine writers have come out of that area.

So he reads all of that material; and there is a lot of it.

And if there is in that map of material that comes unsolicited to the network, material which he believes is viable material for Gunsmoke, he brings it to me -- first to Mr. Katzman, and then to me.

And if we approve it, we then proceed with those writers.

He is also responsible for seeing that every piece of unsolicited material -- before it is read -- that there is

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disclaimer form which must be signed.

So nothing is read until the disclaimer form is sent in.

He also -- when the outline comes in, it is submitted to me or to Mr. Katzman -- and of course, Jack Miller has one himself -- and we make our individual notes.

We then get together -- the three of us -- and decide what changes, if any, should be made in the material.

Occasionally -- and those are lovely moments -- an outline will come in when we all agree on it, and there is nothing to be done -- just let him go and write it.

That is beautiful. But that is very rare.

And then he then takes our suggestion, including his own, and goes back to the writer and discusses with the writer, what changes ought to be made.

Rarely but occasionally a writer will make a series of objections to some changes that we want made.

In that case, Mr. Miller comes to me and says, "Look, I have got a problem. The writer won't do this."

And I say, "Okay, bring him in and we will talk to him."

JUDGE: Mr. Fisher, the question has been answered.

Q (By Mr. Fisher) All right.

Let me try to focus -- I think what you are getting at -- I gather what you are getting at -- well, what authority

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does the executive story consultant have with respect to -- if any -- with respect to resolving problems or grievances which arise from writers working under his direction?

A He has a bt of authority in that respect, but in the past few years, there have been very few -- serious -- in fact, I can't think of a single serious disagreement between the writer and the members of our production staff.

But certainly if those things arise, it is within his province to resolve them.

Q All right.

What authority, if any, does he have with respect to the termination of services of writers?

A Oh, a great deal. Again, as with Mr. Honthaner, or Mr. Katzman, he wouldn't be in that position if I didn't respect his judgment.

But if he comes to me and says, "I think we are beating a dead horse with this writer. I don't think he is ever going to get it," I will simply say to him, "Discharge the man," or "Let's not use him anymore."

I recall one particular instance before Jack Miller became writer on this show when Cal Clements was the story editor.

He had twice rejected the story of Jack's; he didn't think it would work.

And he finally brought it to me because Jack insisted

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"I like it," and Jack wrote it and it was one of our most successful shows of that year.

So that was one of our rare instances in which I have overried the story consultant.

Q Have your executive story consultants ever discharged writers, then?

A Oh, yes, except you don't --

Q Wait a minute.

You said they discuss it with you first. Who talks to the writer after it has been discussed?

A The story consultant. But the word "discharge" is perhaps not a correct word in this case.

It isn't as if someone were permanently employed; they are not.

They are employed on a free-lance episode-to-episode basis.

If a writer doesn't work and he can't fix the outline, he may be discharged on that assignment -- "cut off" as we say in the business.

That rarely happens but it does. And he would do that; Mr. Miller would do that.

Q Thank you.

MR. FISHER: That's all the questions I have,

JUDGE: Mr. Goldman?

MR. GOLDMAN: Has there been an affidavit?

Mr. Mendonsa's appearance has been accepted and my rule is that any competent, capable,witness who has knowledge of any relevant and material evidence, may testify.

Mr. Mendonsa, will you proceed?

MR. MENDONSA: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Mendonsa) Mr. Mantley, have you discussed matters which you have testified to here with anyone from the National Labor Relations Board?

A I don't believe so. I believe that the only people that I have talked to about this case at all have been the gentlemen sitting at this table.

Q Well, have you discussed this matter with Mr. Phillip LeVine?

A Yes.

Q And when did you discuss the matterwith him?

A I'm not sure. It was four or five days ago.

Q And where was that?

A I believe we discussed it here in this building.

Q That would be in his office here?

A Yes.

Q And was anyone else present besides you and he?

A Yes, Dick was present.

Q You are referring to Mr. Fisher?

A Yes.

something like that.

Q And there was some female you identified or female --

A Yes, a female.

Q A female you had spoken to at the Guild?

A That is correct.

Q And do you know who that female was?

A I haven't the remotest idea.

Q All right.

A It never occurred to me at the time that I might be here having to talk about that conversation.

Q All right.

And all during those four years you contributed your dues to the Guild?

A Yes, I did.

Q Are you a member of any other Guild or Association?

A Yes. I am a member of the Producers Guild and I am a member of the Board of that Guild, and I am up for election for the presidency of that Guild.

Q Any other Guild or Association?

A Yes. I am a member of the Actrs Guild.

Q Screen Actors Guild?

A Yes.

Q Any other Guild or Association?

A No. Well, The Retail Clerk Union 472, I believe.

Q Are you a good dues paying member of that?

A Of what?

Q Of the Retail Clerks Union 472?

A No. I have an honorary withdrawal from that union.

Q You have been a member of -- how long were you a member of Retail Clerks Local 472?

A It was a long time.

I was an actor at the time and things were very lean; and I was a member, I guess, about three years.

Q Approximately how many years have you been members of various Guilds or Associations, or unions?

A Oh, that is a tough one. To go back to that one that I was kidding about -- but I really belonged to it -- I guess you would have to say -- I guess you would have to say more than a quarter of a century.

Q All right.

As executive producer, you are hired by CBS -- Columbia Broadcasting Systems, Inc.?

A Yes.

Q You were under a direct service contract?

A No. I am a loan-out.

Q Well, now, who are you loaned out by?

A Mantley Productions, Incorporated.

Q Does Mantley Productions, Incorporated have any other employees?

A No, but we have on several occasions hired writers to

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Q All right.

And do you know if your contract between CBS and Mantley Productions, Inc. includes services of a writing capacity?

A Mr. King tells me it does.

Q You testified as to Ron Honthaner?

A Yes.

Q And do you know if he is under a direct service contract or --

A I believe he is.

Q A direct service contract?

A Yes.

Q And do you know if that contract incorporates within its boundaries writing functions?

A I don't believe it does, but I am not sure.

In any case, Mr. Honthaner does not do any writing for Gunsmoke.

Q And Jack Miller --

A Yes.

Q -- is employed on your staff?

A Yes.

Q And do you know if he is under a personal service contract, or --

A Again, I am not sure.

But I believe that he has his own company also, and is

Q Yes.

A No.

JUDGE: Do any of the other counsel sitting at the table have any further questions?

MR. KEATON: No, your Honor.

JUDGE: Mr. Mantley, this time you are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

JUDGE: We will go off the record a moment.

(Discussion off the record.)

JUDGE: Back on the record.

I would like the record to show that we had a fairly substantial recess to give the parties a chance to do whatever they -- counsels do whatever they had to do, smoke or what not.

Are we ready to go on?

MR. LE VINE: Yes, your Honor.

I will call Carl Milliken.

Whereupon,

CARL MILLIKEN, JR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name?

A Carl Milliken, Jr.

Q And what is your address?

A 3771 Rekhaw Drive in Studio City, California.

Q Where are you employed?

A Warner Brothers, Incorporated.

Q All right.

In what capacity are you employed?

A I am a research director.

Q All right.

How long have you held this position?

A 25 years.

Q And could you tell me what your duties as research director?

A I have three primary functions: basically I supervise the background research that is done for motion pictures and television production.

This in essence is a library function. We have a small reference library.

And I supervise a professional staff that utilizes our facility and the other depositories in the area in order to supply anybody connected with the preparation or production of motion pictures or television with the information that they require to fulfill their function.

Most of that information is visual, because people want to know what something looks like in order to duplicate

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it.

My second function has to do with the recent establishment of a Warner Brothers research service which makes that same service on the part of my staff available to anybody, especially other people in the industry than Warner Brothers employees.

The third function is a quasi-legal function; in that I read all the scripts that are prepared in order to anticipate if possible any lawsuits that may be filed against Warner Brothers predicated on a violation of the right of privacy, libel, and right of publicity.

I also on occasion with the request of the Legal Department, make comparison studies of literary material to determine whether there is a possibility of plagiarism.

I think that pretty well summarizes my function.

Q All right.

And could you tell me what authority, if any, you have with respect to hiring employees in the research department?

A I have full authority subject to the review of the Labor Relations Manager, and within the form of the contractual relations that we have with the office employees' union that represents these people.

Q All right.

Now, can you tell me what authority you have, if any, with respect to the adjustment of grievances of the employees

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in the Research Department?

A Our grievances are minor. I do adjudicate them as they come up.

As an example, we had a "dumb waiter" so called -- an old-fashioned device which operated with a rope -- perhaps some of you have lived in New York in the days when groceries went up that way -- and this was a dangerous thing in that the rope kept breaking.

And people had a tendency of looking in to see where the machine was.

And at my insistence and on the complaint of people whose heads were about to be decapitated, we had a very expensive electric dumb-waiter installed.

By the same token, in recent times since the advent of the Burbank Studios, parking has become a terrible problem at Warner Brothers; and with only a little bit of insistence on my part, have I been able to get employee parking for my people.

They had to walk from Griffith Park to Warner Brothers each day to come to work because they couldn't find a place to park closer.

Q All right.

And did they question you -- did they raise grievances concerning that?

A They complained very loudly, yes.

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Q All right.

Are you a member of the Writers Guild?

A Yes.

Q How long have you been a member?

A Approximately since 1955.

Q All right.

MR. LE VINE: Can we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Mr. LeVine?

MR. LE VINE: We would offer the stipulation that on March the 11th, Carl Milliken was told on the telephone by one -- on March 11th, 1973, on the telephone while talking to the strike committee offices, was told by one Pat Fielder that if he did not cease performing his services for Warner Brothers in any capacity, that his name would be turned over to the disciplinary committee.

JUDGE: Mr. Goldman, is that satisfactory?

MR. GOLDMAN: That is satisfactory.

JUDGE: Does the rest of the counsel join in that?

MR. KEATON: We do.

MR. FISHER: Yes.

JUDGE: All right; that is accepted.

MR. LE VINE: That's all the questions of this witness.

JUDGE: Mr. Keaton?

MR. KEATON: Mr. Miller will ask the questions for the Association.

Q (By Mr. Miller) Mr. Milliken, how many employees did you have in your department?

A At the present time four.

Q All right.

And does that number vary from time to time?

A Yes it does. Since my incumbency, it has been as many as 14; in the latter years it generally has been under 10.

Q And are you an associate member of the Writers Guild?

A Yes.

Q And when was the last time you performed any writing services?

A 1967.

MR. MILLER: I have no further questions.

JUDGE: Mr. Fisher?

MR. FISHER: I have none.

JUDGE: Mr. Goldman?

MR. GOLDMAN: May I see the affidavit?

MR. LE VINE: Yes.

JUDGE: Mr. Goldman --

MR. GOLDMAN: Yes.

JUDGE: -- while Mr. Le Vine is bringing you the affidavit, I want to advise all counsel that unless I am

Whereupon,

MICHAEL CRICHTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) State your name.

A Michael Crichton.

Q And what is your home address?

A 7850 Torreyson Drive, Los Angeles.

Q By whom are you employed?

A MGM.

Q In what capacity are you employed?

A As a director.

Q Of what project?

A Of a feature film called "Westworld."

Q All right.

How long have you held this position?

A Since December, 1972.

Q All right.

Now, could you tell me what your duties are as director?

A The director of a film is essentially responsible for everything that appears on the celluloid and comes out at the end.

There are two aspects of this: the first is the people who are hired to actually make the film -- the production crew, the cameramen, the editor, the make-up people, the sound.

All of whom -- I don't literally have a power to hire them. But they are almost invariably my choices.

Of course, the studio technically hires them.

And second are the actors, which are again in large part my choices. But technically, they are all hired by MGM.

Q All right.

Could you describe what your duties are after you have recommended the hiring of these various people?

A Well, from that point, there are two major stages in the work.

The first is the deciding how the film will be shot and what precisely it will contain, down to the very fine details of clothing and so on.

And the second is to carry out the shooting of the film day by day and to finish the shooting within limitations of time and money.

Q All right.

What authority, if any, do you have with respect to resolution of grievances that arise during the performance of your duties as director?

A As a practical matter I have a lot of authority.

Once again, I am not the employer; but I serve as kind of a final authority for MGM and for other issues that never reach MGM.

For example, we had an actor who, for personal reasons, had to leave the production before his scheduled time to leave, and we were able to adjust the shooting schedule -- I was able to adjust it; so he was able to leave before he was scheduled to go.

Then there are ongoing problems with extras whose pay is determined on a scale according what kind of work they do, whether they represent a particular character or whether the character they represent is important to the film.

And the extras themselves will watch how they are placed in the film and try and decide for themselves how they are being used.

But in the end, it is the director's function to determine whether or not a character who may have been shot right in the middle of the screen, for example, is an important person or not.

We had a situation where two stunt men did a stunt, and I determined which stunt would go into the final film, which had financial considerations.

Q All right.

Are you a member of the Writers Guild?

A Yes, I am.

Q And how long have you been a member of the Writers Guild?

A Since 1969.

Q Are you an associate member or a full member?

A I believe I am a full member.

MR. LE VINE: Could we go off the record for one moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Gentlemen, I understand that you are now prepared to proceed.

Mr. LeVine, will you go ahead?

MR. LE VINE: Yes, sir.

Q (By Mr. LeVine) All right.

Are you aware of the present strike being engaged in by the Writers Guild against the Association of Motion Picture and Television Producers and the Networks?

A Yes, I am.

Q Did you receive any telephone calls from the Writers Guild from any member of the Writers Guild since the strike began?

A Yes, I did.

Q Could you tell me when?

A I received them on the first day of the strike, which is

March 6th -- Tuesday -- whatever that is.

Q Can you tell me who called you?

A The first call was from Harlan Ellison and the second call was from John Furia.

Q Where did Mr. Ellison call you?

A They both called me at MGM on the Sound Stage.

Q All right.

And what time did you receive that call?

A The first call was about 10:00 in the morning, and the second call was about 2:00 in the afternoon.

Q Did you recognize Mr. Ellison's voice?

A Yes, I did.

Q What did he say to you and what did you say to him, if anything?

A He called to tell me that I had been recognized crossing the picket line earlier that morning, and that the members of the Guild were very excited and very upset about the fact that I had crossed the picket line.

He said that he felt that it was necessary to make an example of someone, and I was going to be it.

The suggestion was that there was a good deal of personal animosity directed toward me. He said that I had better get out of there -- out of MGM.

And I told him that I was only directing, that I was no longer writing, and that I felt that I was obeying the

Writers Guild strike to the extent that I could; which is to say that I had a contract to perform directing services and I had a Guild that governed that function.

And that Guild -- meaning the ~~Directors~~ Guild -- ~~had~~ told me to work or face damage suits. And so I was working. I was not writing.

We had some other conversation, but I don't think it is relevant.

Q Would you please state that?

A Well, he had heard that I was not well disposed to the Writers Guild at that point anyway as a result of some difficulties I had had with the Guild some weeks before about a -- actually about a clerical violation of one of their working rules.

And we discussed the fact that this -- that my pre-existing irritation with the Guild led me to have fewer qualms about crossing the picket line that I might have had.

Q All right.

And did he say anything to you about injuring your reputation?

A Yes. He said that -- well, since we were discussing the writing and directing functions, I said that it was my feeling that it would be illegal for the Writers Guild to control my work as a director -- solely as a director.

And that I felt ultimately it would be shown to be

illegal.

And he said that even if that proved true, that I was at that point, a strike breaker; and that people who were strike breakers always had a bad -- kind of a bad taste lingering about them.

And he suggested that this would follow me like a little banner afterwards.

Q All right.

And did you have any further conversations by phone with any Guild representatives?

A Yes, with John Furia.

Q About what time?

A It was about 2:00 in the afternoon.

Q On what date?

A The same day.

Q And where did he call you?

A He called me down on the Sound Stage.

Q All right.

And did you recognize Mr. Furia's voice?

A Yes, I did.

Q And do you know what position Mr. Furia occupies with the Guild?

A I think he is president elect now; I don't know what he was then.

Q Did you recognize his voice?

A Yes, I did.

Q All right.

And what did he say to you and what was your reply, if anything?

A Well, he was very sort of paternal, and he indicated that he understood the difficulty ~~of my position, and he recognized~~ how much I wanted to direct the film.

And how much effort I had put into it prior to the start of the strike.

But he said he wanted me to know that this was a very serious action in the eyes of the Guild, and that they were going to have to act very rapidly and with some force.

And that he wanted to make sure that I understood the situation I was in.

He said that I was virtually alone in my stand as a strike breaker.

And he named several other hyphenates who had respected the strike.

I repeated my feeling, that I was not writing but that I was only directing, and I had another Guild to govern that.

And I asked him about some other writer/directors whom I knew; and I asked him what they were doing.

He said that he didn't know what they were doing. And in fact, I knew perfectly well they were breaking the strike.

I told him finally that if "push came to shove," I would

rather be thrown out of the Writers Guild than the Directors Guild since I felt my future was really more with the Directors Guild.

And he explained that it wasn't that simple: that if I were expelled from the Writers Guild, that I couldn't work as a director in the future -- work solely as a director because members of the Writers Guild could not work as writers for me as a director if I had been thrown out of the WRiters Guild.

Did I say that clearly?

JUDGE: Gentlemen -- Mr. LeVine, do you have any further questions?

MR. LE VINE: Yes.

There is still more to this conversation that I would like to discuss --

JUDGE: Well, before you -- in fairness to the witness, all I can ask of you is that you repeat what you have heard, and know to the best of your ability.

And insofar as your testimony, if it ever does becaome confusing, I will expect counsel to clear it up.

Go ahead, Mr. LeVine.

Q (By Mr. LeVine) Could you continue on with that conversation?

Did Mr. Furia say anything about the fact that your crossing the picket line would not be forgotten?

MR. GOLDMAN: I object.

JUDGE: Mr. LeVine, that is --

MR. LE VINE: All right.

Q (By Mr. LeVine) Did he say anything about the future consequences of your actions?

A Well, he said only that if it were my expectation, that this matter would all blow over very rapidly, that it would be wrong to put any faith in that.

And that the Guild intended to publicize the people who were convicted of strike breaking.

And to see to it that this publicizing process was carried forward a long time in the future so that none of this would be forgotten.

Q All right.

And did you receive any communications from the mail -- in the mail on or about April 6th, 1973 from the Guild -- April 6th or 7th?

A No.

Q All right.

A Is that -- are you referring to their notification, that I was --

Q Yes.

A -- I didn't get -- that is why I hesitated.

Q Did you receive any communications from the Guild regarding a disciplinary hearing?

A He is a writer who has been, I gather, a member of the Writers Guild for some time, and he was on one of their boards.

Q All right.

And what picture did you direct immediately preceding "Westworld?"

A None. I directed a year before, and --

Q What picture was that?

A It was a movie for ABC called "Pursuit."

Q All right.

In your work as a director, how do you function in relation to writers?

Do you work with them in any manner, shape or form?

A Yes, I do, when there is a separate writer.

Q And would you describe how that works?

A Generally, it is accomplished through a series of meetings where the writer presents his ideas, or as the project progresses, his script or changes in his script.

And this material is discussed and further changes are talked about; and differing views from the director and the writer are reconciled hopefully.

Q Does this go on during production?

A This goes on classically in what is called "pre-production," which is the period prior to the actual shooting.

Q All right.

MR. LE VINE: It is.

JUDGE: Mr. Goldman, how long would you like for that?

MR. GOLDMAN: About 15 minutes.

JUDGE: All right.

Well, gentlemen, we will return at five minutes past 5:00.

And if at that time Mr. Goldman needs additional time, I will allow it.

You may get up and move around. And I would greatly appreciate it if everybody is back promptly.

(Short recess taken.)

JUDGE: On the record.

Mr. Goldman, do you want to proceed?

MR. GOLDMAN: Yes.

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Crichton, do you know Mr. Harlan Ellison?

A Yes, I do.

Q How long have you known him?

A I think the easiest way to answer that is to say that I have met him twice in the last two years.

I last saw him a year or a year and a half ago.

Q Did you meeting informally?

A Yes, I did.

Q All right.

Q Now, with respect to directing a screen play, there comes time, does there not, in the direction of a screen play when a piece of dialogue has to be changed, and a scene might have to be altered.

Is that correct?

A That is correct.

Q All right.

Now, who normally performs that function?

A The director.

Q He changes the dialogue, alters the screen play?

A Yes, within a relatively small limit.

Q Well, let's say it is out of that "relatively small limit," then who would do it?

A The writer would do it.

Q In the case of an individual who has written the screen play and is directing his own screen play, he would do it?

A Should the situation arise, yes.

Q Yes.

Did youhave any other writers employed on that film?

A No.

Q Are there usually writers employed on films that a person is directing?

A At the time of shooting, there may have been other writers employed.

Q I take it you are the writer that is employed?

A Yes, were I writing.

Q At the time of the strike, March 5th or 6th, you were advised by Harlan Ellison as to certain events, and you advised him that you would stop the writing?

A No, sir. I told him that I had stopped.

Q You had stopped the writing?

A Yes.

Q You had stopped the writing when the Writers Guild struck?

A Yes, sir.

Q All right.

Now, Mr. Crichton, a simple question: you were at MGM directing a film and there has to be some writing done, and you are there.

And how would the Writers Guild know?

MR. KEATON: Objection.

It is argumentative with respect --

THE WITNESS: May I answer the question?

JUDGE: Just a moment.

Q (By Mr. Goldman) How would the Writers Guild know that you were performing any writing functions whatsoever?

MR. KEATON: Objection, your Honor, argumentative and speculative.

It belongs in the brief but not from the witness.

JUDGE: Overruled.

I will take the witness's answer to that.

THE WITNESS: At the immediate moment, there is no way to know. However, at this moment, it is extraordinarily easy to determine whether any writing is done.

And in fact, it is quite demonstrable that none was done.

Another way of saying it --

Q (By Mr. Goldman) I'm sorry.

I didn't ask you another question.

JUDGE: The witness may answer completely if he has not already answered -- given a complete answer.

Have you completed your answer?

THE WITNESS: Well, I was going to say that at the first moment of the strike, the -- there is no way to tell except for my word, which in essence, what I was saying was that I was not doing any writing at all, only directing.

And at this point, it is very easy to determine whether the screen play which is dated -- and all changes are dated, since they go through MGM -- many of the departments -- it is very easy to determine whether in fact that script was in any way departed from in terms of the final film.

The film is now shot.

JUDGE: You are saying that as of this moment in time, it could be determined?

THE WITNESS: Yes, sir.

MR. LE VINE: No, I have no further questions.

JUDGE: Mr. Keaton?

MR. KEATON: I have a couple.

REDIRECT EXAMINATION

Q (By Mr. Keaton) Did MGM require of you to perform any writing services after the commencement of the strike?

A No. And I told them well in advance that I would not. In other words, at the time I was doing revisions, I told Studio executives that I would not write further.

And no one asked me to beyond the start of the strike.

Q This letter of indemnification from MGM that you received, did it state that it indemnified you against being barred from working in the industry in the future?

A No.

MR. KEATON: I have no further questions.

JUDGE: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: No.

JUDGE: Mr. Crichton, you are excused; thank you very much.

MR. GOLDMAN: Subject to --

JUDGE: Well, that is correct.

I would ask that when you return that you get in touch with Mr. LeVine so that he will know that you are returned.

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

I trust you gentlemen are ready after the recess?

I'm sorry to see that Mr. Hackler is still ill and has not yet returned.

Mr. LeVine, are you prepared to go on, or before we do, are there any matters that have arisen during the recess that I ought to consider before we continue?

(No response.)

JUDGE: I hear nothing.

Mr. LeVine, do you want to proceed?

MR. LE VINE: Yes, sir.

Our next witness will be Paul King.

Whereupon,

PAUL KING

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name.

A Paul King.

Q And what is your address?

A 400 South Plymouth Boulevard, Los Angeles.

Q All right.

And where are you employed?

A CBS.

Q And what is your position?

A Vice-president, program productions.

Q All right.

And how long have you held this position?

A Approximately three years.

Q And what are your duties?

A I supervise the physical execution and air date schedulings of the prime time schedules for the network.

MR. KEATON: Can you speak up a little?

THE WITNESS: Yes, sir.

Q (By Mr. LeVine) All right.

And could you describe in some detail what your job entails?

A I work with the producers and production companies for all of the series that we broadcast.

My function is primarily creative but I do get involved with all aspects of production.

Q What authority, if any, do you have with respect to hiring employees?

A I have the voice of consultant with production companies, primarily.

Q Can you recommend that employees be hired?

MR. GOLDMAN: I object.

JUDGE: Leading?

MR. GOLDMAN: Yes.

JUDGE: All right. Sustained.

Q (By Mr. LeVine) Do you have any employees who are directly under you?

A Yes, I have a staff of six.

Q And what are their classifications?

A They are program executives for the network who function as liaisons for me with the series.

Q Do you effectively -- can you hire?

A Yes.

Q Those employees?

A Yes.

Q All right.

What authority, if any, do you have with respect to the adjustment of grievances?

A It varies; I have resolved grievances occasionally with certain of our series.

Q And could you describe the types of grievances which arise in the production process, or other activities in which you engage in in which you adjust grievances?

A As for example, an actor misbehaves on the series, I generally get into that and can recommend his dismissal.

Q All right.

Are there any other types of grievances which you can adjust or have adjusted in the past?

A There was an example a few years ago of an actor who felt during a sequence that the stunt man was a little bit too rough.

His agent indicated that they might sue the network; so I screened the film with the agent in question, and we agreed it really wasn't that difficult.

Q All right.

Are you a member of the Writers Guild?

A I am.

Q How long have you been a member?

A Some 20 years.

Q And when was the last time, to your knowledge, you performed any writing functions?

A My last credit was about eight years ago when I wrote and produced a pilot.

Q All right.

A And I might add to that, that six years ago I produced a pilot for CBS and did some polishing on that script, but was not paid for it, and did not receive credit.

Q All right.

Now, let me show you what has been marked as General Counsel's Exhibit 3 and ask you if William Cayden held the position set forth opposite his name from February 1st to the present.

A Yes, he did.

Q All right.

And I am going to ask you if Franklin Barton held the position set forth opposite his name?

A Yes.

Q And does Phillip Barry occupy theposition -- or did he occupy the position from February 1st to the present?

A Yes, he did.

Q All right.

Now, could you tell me what the duties of William Cayden, who is described as a General Programming Executive, are?

A He was assigned to the Film Unit that produced or supervised the production of the 90-minute anthologies for the network.

And he was a creative liaison with all the producers involved.

Q All right.

Could you tell me what authority, if any, Mr. Cayden has with respect to the hiring of employees?

A He could recommend the employment of certain of the various producers, directors and writers who were involved in that unit.

Q What --

A The 90-minute anthological unit.

Q All right.

And could you tell me what authority, if any, he would

have with respect to the adjustment of grievances?

A I think you would have to define "grievance."

There was one instance when a film was being produced in Salt Lake City that utilized the use of helicopters; and one of the companies that supplied these aircraft, decided to increase their fee.

He arbitrated that since he was on the scene; and he informed them that they would have to abide by their original agreement -- if that is a grievance.

Q Anything else that you can recall?

A There are very often disputes as to whom should play the lead or the secondary roles in these pictures; and he was directly involved in that.

Q All right.

And did Phillip Barry have similar duties to William Cayden?

A Yes. At that time he was Mr. Cayden's supervisor; and his duties were precisely the same with some more responsibility.

Q All right.

Now, could you tell me what the duties of Franklin Barton, who is described as vice-president, Program Development, are?

A He is responsible for the development of future programs for the network.

My responsibility deals with current programs.

Q All right.

And could you tell me what authority, if any, Mr. Barton would have with respect to the hiring of employees?

A He has almost total autonomy in that selection.

He deals directly with all of the production companies, the indepents -- the "creative community", if you will -- and has full authority to decide who will do the various projects.

Q What authority, if any, does Mr. Barton have with respect to the adjustment of grievances?

A Again I think you would have to ask me what "grievance" would mean in this case.

There are so many different kinds of grievances that are involved in the production of pilots.

He could have a dispute, if you will, with the production company over whom might direct the picture.

He certainly would have the major voice in who was cast in these pictures.

If there are differences between the companies, he generally has the final voice.

Q All right.

To your knowledge, is CBS a signatory to any collective bargaining agreement with the Writers Guild -- or, were they signatory to a collective bargaining agreement with the Writers Guild?

MR. GOLDMAN: Can we make it into three minutes to smoke a cigarette?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Let the record show that we have had an extended recess to give Respondent's counsel an opportunity to go over affidavits submitted by the General Counsel.

Mr. Fisher, I think you said you had no questions of the witness?

MR. FISHER: No, I have a few.

JUDGE: That's right.

We went into recess to give you a chance to think about any questions.

You say you do have some questions of the witness?

MR. FISHER: I do.

JUDGE: All right.

Q (By Mr. Fisher) Mr. King, how long have you held your current position of vice-president and program -- excuse me, vice-president of Productions for CBS?

A Approximately three years.

Q And what was your employment prior to that time?

A Prior to joining CBS?

Q No. Prior to, let's say, as of three years ago -- immediately prior to assuming your present position?

A I was director of Program Development for two years, and I was a program executive prior to that at CBS.

Q All right.

And what were your duties as a programming executive?

A I was assigned to various series and supervise them creatively for the network and acted as liaison with all related departments.

Q Liaison with production companies supplying product to CBS?

A Yes. And also with advertising agencies, our Program Practices Department, Business Affairs, Sales, etcetera.

Q All right.

And when you held that position approximately how many programs per year would you -- I assume these are prime time programs that you are talking about?

A Yes.

Q How many programs per year would you be in charge of as of --

A I averaged six series a year.

Q All right.

And how long did you hold that job as program executive?

A About two and a half years, I believe.

Q And what did you do immediately prior to that time?

A May I reverse the order of that?

Q Is that hard for you? Sure.

A Can I start from the beginning?

Q Sure.

A I began as a story consultant, I believe, in 1951 at Universal Studios.

I was also a legal research analyst for that company based primarily on a literary academic background.

Subsequent to that, I became a screen writer, a television writer, and then when I went to do production, I began as a story editor, associate producer, producer and finally an executive producer.

Q And then you went into these --

A And then I joined CBS.

Q I see.

A As a program department executive.

Q All right.

And did you hear the testimony of John Mantley last week?

A I did.

Q Is it to your knowledge correct -- his statements regarding the authority of producer, executive producer, director, story consultant and so on, for CBS?

A Yes. I felt he was very detailed and very accurate in his description of the various duties.

Q Based upon your exposure which you have testified to

to other production companies in the industry over the years, what is your opinion as to the similarity or dissimilarity, if any, between CBS practices and practices by association companies?

A I would say --

MR. GOLDMAN: I object.

I ask that there be some foundation. Ask him if he has knowledge as to who, how many association companies.

JUDGE: All right.

Mr. Fisher, you will have to develop that.

MR. FISHER: All right. I was going to come back to that.

Q (By Mr. Fisher) You testified that you as a programming executive have responsibility for approximately six -- liaison responsibility for approximately six prime time programs per year during the years in that position?

A Yes.

Q How many programs do you have direct responsibility for in your present position as vice-president of production?

A 22; the 21st has been moved geographically to New York, but I still have overall responsibility for it.

Q All right.

Now, putting together your experience as a vice-president of production and as a programming executive, what percentage, to your knowledge, of the television series production which

takes place in the industry have you been directly exposed to?

A I would say probably 90 percent of all the production, both film and tape, in this industry.

Q All right.

And when you say "exposed to", what do you mean?

A In my experience at CBS, we have probably dealt with every production company in Hollywood, both major or independent.

It really doesn't matter because CBS has a very Catholic philosophy about that.

We don't deal with one company to the exclusion of another.

So that as a result I probably had a direct relationship with probably most of the viable production companies in Hollywood.

Q What do you mean by a direct relationship? What is the nature of your relationship as an executive?

A In my current capacity or --

Q Well, let's talk to your current capacity first.

A It varies from series to series. "Gunsmoke", as you know, is a CBS program so that I am probably more directly involved with that since we have the budgetary responsibility as well as the creative, but on each series, I deal directly with the production itself.

I try to insure that the production values are correct and professional.

I have a large voice in who does the series beginning with the writers who do individual episodes, the directors, and some of the peripheral casting.

I am very often consulted even as to cameramen and things like that.

Q Do the independent companies come to you and consult with you about who should staff --

A I don't think you can differentiate. I think all companies, major or independent.

Q I was referring to supplying companies.

A Yes. My relationship with all of them is about the same.

Q And how often do you have contact with these companies?

A I would say almost on a daily basis.

Q All right.

And what about when you were a programming executive prior to your becoming vice-president? What was the nature of your contact with the programs for which you had responsibility?

A It was much closer than the capacity I function in now, because I spent a great deal of time on the production lots themselves.

During production I very often viewed dailies with the

producers and the directors sometimes.

I dealt occasionally with the heads of theproduction companies if there were certain problems.

I would get involved sometimes in the music aspect of a show. I certainly got involved in the main title creation and all to the aim -- the ultimate aim of better programming.

Q All right.

And were you present when Mr. Epstein testified?

A I was here for most of his testimony, I believe, yes.

Q Did you hear his description of the duties and authority of executive producers, producers and similar positions?

A Yes, I did.

Q And based upon your exposure to association companies, would you agree or disagree with Mr. Epstein's view?

A I think he defined the function very clearly, yes.

Q All right.

Did you hear Mr. Victor testify?

A I heard part of his testimony. I came in in the middle of it.

Q Did you hear him testify concerning the duties of executive producer and producer?

A I did.

Q And did you hear him testify about the duties of directors?

A Yes.

Q And --

MR. GOLDMAN: I have a few.

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. King, did you hear the testimony of Mr. Freedman?

A David Freedman?

Q Yes.

A I did.

Q Do you recall the testimony?

A In generalities, yes.

Q All right.

And do you agree with what he stated?

A He represents the Business Affairs aspect of a studio which doesn't necessarily relate to the same operation the network has.

Some of it I found unique probably on to their needs. And that it might not necessarily apply to CBS.

Q Mr. Freedman testified he worked for CBS and NBC, and I believe, Warner Brothers.

You're saying that parts of his testimony were unique as to Paramount Television that you wouldn't find at CBS?

A As applies to me. I am in charge of the physical production of what goes on the air, and not necessarily what precedes that, or what follows it.

So I am not familiar with some of those contracts or how they are worded.

screen play.

Is that correct?

A It is -- yes, that is correct. It is not -- it doesn't happen very often.

Q It doesn't happen very often but it can happen?

A Yes.

Q And it does happen?

A Yes, it does.

Q All right.

And at that point in time, the creative arts of the story editor and the new writer would come to play, or the old writer?

And they would be discussing the product -- the outline that was furnished?

A Yes.

Q What is the step -- the next step from the outline? Is it the screen play itself?

A Yes. The outline is read by the producer and the executive producer.

It is read under normal circumstances by the program executive from the network.

Then various notes are exchanged or comments are given. And these are related back to the writer who then proceeds to write the teleplay in question.

Q All right.

Now, he finishes the teleplay, and he is paid for that.

And at that point in time after the teleplay is completed, does the writer have to do the rewrites that are necessary for the teleplay, or could he just leave it there with you for you to take care of?

A I would again, if I might, presume to correct you on one step.

In these contracts the payments are made for the story outline, the first draft script and the -- and then the final draft script.

He delivers the first draft, which again goes through the process I just described.

And based on that creative process he delivers the final script.

And when a script is mimeographed in its final form, it is considered ready for production.

And what writing transpires thereafter is normally due to production problems stemming from a production meeting.

Q Oftentimes is it not true that that writer will then probably embark on some other writing functions somewhere else?

A Normally during this process he had several writing commitments.

Q All right.

Now, suppose he has given you the final draft that you Xerox or mimeograph, and you go into production and a scene becomes unworkable.

Do you have to contact that writer to change the scene?

A You may contact that writer. You have no contractual obligation to do so that I know of.

Q All right.

If the scene is changed substantially who gets the writing credit?

A The Writers Guild of America automatically arbitrates any writing that is done within a production company.

So the decision, in other words, is the Guild's; no one else's.

Q All right.

Now, suppose you are at that point in time where you have the screen play or the teleplay, in this case, and it has to be changed substantially, and that writer who actually produced the teleplay is not available, or does not wish to take on that commitment -- he has got other commitments --

JUDGE: Just a moment, please.

Mr. Goldman, this is now getting to the point where I can't see any relevance or materiality.

MR. GOLDMAN: Well, I --

JUDGE: I am relating back to the objection made by

General Counsel some time ago.

MR. GOLDMAN: Well, the relevance and materiality that we are trying to show is that I am trying to get to the point of the product where it comes into the hands of the story editor, the associate producer, and the changes they make on this product, and the fact that a producer or an executive producer, or program VP can probably change it.

I am not going to be too much longer --

JUDGE: All right.

On that representation, go ahead.

I have difficulty with this detail now. Go ahead.

Q (By Mr. Goldman) May we have an answer to that last question?

A Would you repeat the question?

MR. GOLDMAN: Would you read the question?

(Question read by reporter.)

Q (By Mr. Goldman) I take it that the options that are open for a production company is to seek out another writer to make the substantial changes or to use their in-house writing ability to make the changes.

Is that correct?

A AGain, if I may, you are making the assumption that what you have just described is a major rewrite.

Invariably this is not the case at all.

By production problems, I mean that the script is over

budget, one scene that was written night for night cannot be shot that way because of the extraordinary calls that effects the next day's production, and --

Q All right --

A There are those -- it is a technical thing, in other words --

Q Do you know what the A through H functions are?

A Yes, I do.

Q All right.

Now, other than the A through H, are the writing functions that I am talking about.

Let's say you have other than the A through H writing functions which would come under the Writers Guild contract?

A Yes.

Q Those are the functions and writing responsibilities I am talking about.

Now, assuming at that point in time that there has to be one of those writing functions to be performed, I take it you have the option of going out to get another writer or use in-house writing?

A If it is other than A through H. the script would never be mimeographed final because it would not be acceptable creatively to the various people involved.

At that point, you do have an option to bring in another writer, or to do it with the personnel that are on

yoru own staff.

Q All right.

I take it you ascribe to the same thought that Mr. Freedman and others testify to, that not all producers can write and not all writers can produce.

Is that correct?

A That is correct.

Q And where you have a dual purpose man, he is probably more valuable than a single-purpose man, in that he could perform the writing functions, whereas the straight producer couldn't perform the writing functions?

MR. KEATON: Objection.

It is argumentative; it is conclusionary and irrelevant and immaterial.

What difference does it make if someone in this proceeding is more valuable than somebody else?

JUDGE: Lloyd, would you read that question back?

(Question read by reporter.)

JUDGE: I'm going to overrule the objection. You can answer it if you can.

THE WITNESS: I'm afraid you have to be more specific That was very general and I really can't quite follow what kind of an answer you want.

Q (By Mr. Goldman) That is not the answer that I want. I am not looking for a specific answer from -- I'm just trying

And that is why it is used primarily for internal use only.

Q Externally what would they be considered?

A Program executive.

Each network has a different nomenclature for these categories.

Q All right.

So Phil Barry externally is considered a program -- strike that.

Phillip Barry, a program executive, reports directly to you?

A Yes.

Q And you had the right to fire him?

A Yes.

Q All right.

Now, any recommendation that Mr. Barry makes has to get your final approval?

A In what area?

Q In any area?

A He has the responsibility to obviously make judgments on his own.

And if they are considered important, yes, he brings them to me.

Q Well, what judgments does he have the right and responsibility to make?

A In dealing with the producer, for whom he supervises in terms of the network liaison area.

He has the right to consult with the producer about writers.

If he doesn't feel the writer is right for that program, he could so exercise that prerogative and tell the producer.

He has the right to work with the producer in selecting directors for the series.

He gets involved in incremental casting on individual episodes.

Q Let's give an example. Which one of these liaisons -- which one of these production companies is he liaison for?

Is he liaison for Tandem Productions?

A Are you referring to Mr. Barry?

Q Yes.

A He is the liaison with "Hawkins" which is an MGM 90-minute series, with "Shaft," which is also a MGM 90-minute series, and with the general anthalogical area of films that we make.

Q Well, I don't quite follow that. MGM, Inc., is the producer of a program called "Hawkins"?

A Yes.

Q And the name of the producer employed by MGM to producer that film is David Karp?

A The executive producer is Normal Felton; the producer

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You are saying --

A Whenever they send me the bill, I pay it.

MR. GOLDMAN: I have no more questions.

JUDGE: Mr. LeVine?

MR. LE VINE: No questions.

JUDGE: Mr. Keaton?

MR. KEATON: Yes.

REDIRECT EXAMINATION

Q (By Mr. Keaton) Have you had any contact with anyone from the GUild since the strike started -- I mean oral contact?

A Yes.

Q Was it a personal conversation or by telephone?

A Excuse me. You said after the strike started?

Q Yes.

A Yes, I have heard from the Guild.

Q Was it personal or by telephone?

A By telephone.

Q Will you relate the conversation as approximately when it occurred, who it was with and what was said?

A I was contacted on Wednesday, I believe, March the 28th, by a man by the name of Julian Plowden, who identified himself as a man on picket committee for the Guild.

He instructed me to report for picket duty at the main gate of Paramount the following morning at 6:00 a.m.

vitally interested in this area.

Q You said you were given to understand. Was that something he said?

A I don't recall the way he worded it, no; it was my interpretation that this is what he meant.

Q All right.

And was that the end of your conversation?

A Yes.

MR. KEATON: I have no further questions.

JUDGE: Mr. Fisher?

Q (By Mr. Fisher) Mr. King, how many program executives are there?

A Six.

Q Six. And Mr. Barry is one of six?

A Yes.

Q All right.

You testified that directly for CBS programs and for programs purchased by CBS, you have, over the years, been engaged in making recommendations or in actual decisions on the hiring of producers.

Is that correct?

A Yes.

Q What value, if any, in making such a decision do you attach to the fact that a producer may or may not -- a potential producer may or may not have a good working

relationship with members of the Writers Guild of America, particularly writer members?

A If he does not have a good relationship with writers, I don't see how he can function as a producer.

Q Why not?

A It began with the word, and I think that answers the question.

Without "material" there is no production.

And if a man cannot engage the services of professional writers to do the material, then I don't know what he would produce.

Q All right.

And what value, if any, do you access in making a decision on a producer as to the quality of writers which he has traditionally worked with?

A It would depend on what kind of program. If it were a drama, obviously you would concentrate on those writers which were most effective in the dramatic field.

If it were a comedy, the reverse would be true.

Q Well, what I am asking you is: what value -- in your trying to select a producer or recommend a producer, what value do you place upon his ability, if any, to attract and hold good writers or bad writers, as the case may be?

A Well, it has great value.

Q Why?

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A Because, again, without ability to employ and attract and extricate from good writers material, that is highly professional, I can't understand what function he would have.

Q All right.

Now, let me give you a hypothetical in that regard: what if you had before you for a job two producers -- potential producers who had served as producers in the past for other companies, or perhaps yourself, and the decision is to be made as to which is to be assigned a particular assignment -- a particular program -- a television series.

One of them --

MR. GOLDMAN: I object, your Honor.

I don't even have to listen to the rest of it. It is argumentative; let him argue it in his brief.

JUDGE: Well, I do not normally rule on a question unless it is completed --

MR. FISHER: I think you can gather where it was going, unless you want me to go through it?

JUDGE: No.

I think you would have to complete it.

The way you started it is possible you were posing a hypothetical question for the witness for an expert opinion, which might make a difference.

MR. FISHER: Well, that is exactly what I am doing. I am saying as a --

A Would you please define the "A through H categories" for me?

JUDGE: Mr. Goldman, would you get a copy of that contract and show it to the witness, please?

MR. GOLDMAN: I have it right here.

Q (By Mr. Goldman) Here it is.

MR. KEATON: Your Honor, while the witness is looking and we are all looking, I would like to object again.

This witness is now being asked to tell us what is in the collective bargaining agreement.

Why doesn't Mr. Goldman just simply ask him what a polish is?

You are supposed to decide whether it is covered by "A through H" or not --

JUDGE: Just a moment.

Let the witness look at this.

MR. GOLDMAN: That is what I was going to ask him.

JUDGE: Have you finished, sir?

THE WITNESS: Yes.

JUDGE: Mr. Goldman, are you ready to proceed?

MR. GOLDMAN: Yes.

Q (By Mr. Goldman) Will you please describe a rewrite to us?

A A rewrite is generally a structural change in a script that is purely creative.

Q Would you explain a polish to us?

A A polish is a very minimal alteration of a script, or even a scene; it doesn't necessarily involve a whole play.

Q Have you read the collective bargaining agreement which is General Counsel Exhibit 2, page 70, A through H category?

A I have.

Q When you were referring to polishes and rewrites earlier, I take it it does not include the A through H category?

MR. KEATON: Objection, your Honor.

This is a conclusion of law again.

Furthermore, there are other provisions of this contract that makes the point, I think -- and it also provides for exclusions from writing.

It is not just A through H.

This witness would have to be in your position to make those decisions.

JUDGE: Well, as of the present moment, the question to the witness is, if I understand it, when he testified to polishes, was the matter he was referring to contained in A through H, or was it not.

Is that your question?

MR. GOLDMAN: Yes.

JUDGE: I will take the answer to that.

If you understand what I am saying?

THE WITNESS: Well, if I can phrase this with my own

you should bring -- the burden is on you to bring that to my attention before the end of the hearing -- before the hearing closes.

And we will operate on that basis.

Now, with respect to Mr. Goldman, my position on your point is the same as it was before; that I will meet the specific points that you are raising, or that you are concerned about, when and if they occur.

If they don't occur at all, I don't have to meet them.

Is there anything else preliminary?

MR. LE VINE: No, your Honor.

MR. KEATON: Your Honor, the record, I think shows there have already been some corrections on this GC-3.

JUDGE: All right.

The record shows that, and I think the document shows it.

All right. Call your next witness.

MR. LE VINE: Our next witness is Herbert Wright.

Whereupon,

HERBERT WRIGHT

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A Herbert Wright.

Q What is your address?

A 2068 Watsonia Terrace, Hollywood, California.

Q Where are you employed?

A Universal Studios.

Q And what is your position?

A Associate producer.

Q On what project are you an associate producer?

A Currently?

Q Yes.

A A feature film -- theatrical feature film entitled "Newman".

Q All right.

And do you have a personal services contract?

A I do not at the present moment, no.

Q How are you employed?

A Week to week employment.

Q What are your duties as associate producer?

A To -- my duties as associate producer are, that I work as actually the producer's right arm and am engaged in all phases of the production from pre-production to post-production.

I operate in the field as a liaison between the producer and the actors, the producer and the director, the producer and the production crew, and the producer and the studio.

I -- if he has a problem that comes up on the set -- for instance, if an actor doesn't like his lines or doesn't like his wardrobe, or he is unhappy with his dressing room, or the art director decides that the director isn't fully utilizing the set, or anything of that sort, then I have to settle that -- that problem so we can go on shooting the film.

As well as I am involved as far as the scripts are concerned.

I am involved in reading that script, seeing how it fits the budget -- you know, production problems.

And I am involved in whether we can shoot in L.A. or shoot in New York, or whether we can shoot it, you know, all in one day, or what is on the shooting schedule. And adjusting that.

Q You mentioned that you adjust various problems that arise.

Do problems ever arise with respect to extras?

A There are problems as to how many extras the director is allowed to have.

In other words the budget may say he may have 15 extras when he wants 300; that happens quite often.

Q All right.

And do grievances ever arise with respect to extras' pay that you would deal with?

A Yes. But generally I am the last in the line to get involved with the extras' pay. Usually it is the assistant director, or the unit manager.

If they have a problem that they cannot meet, then they have to come to me. Generally I try to free the producer from the day-to-day, you know, trivia and tedium of his problems so that he can go on either producing the show over all, or produce the next show,,for instance, in a T.V. series.

Q All right.

And do problems ever arise with respect to stunt men that you would resolve?

A Yes, they have.

Q And could you describe the types of problems?

A Well, I could describe the particular problem I have had.

Would you prefer that?

Q Yes, please.

A Well, we had a problem with -- on "Cool Million" with James Farrentino where the stunt man was supposed to do the stunt -- hanging from the ceiling of this room -- and Mr. Farrentino decided that he wanted to do the stunt himself.

This was on the first couple of days of shooting, and it was against the studio policy for an actor to do a very dangerous stunt that we can't finish the film on.

In other words, he might be injured.

Or that it simply will not look as good as the stunt man doing it.

So I had to adjust that problem, and --

Q How did you adjust it?

A Well, first of all, it turned out he did not like the stunt man, so I recommended we hire another stunt man.

So they hired another stunt man to replace the former stunt man.

Q You just mentioned that you recommended another stunt man.

What authority, if any, do you have with respect to the hiring of employees?

A In most of the procedures, I simply recommend hiring In other words, if we are in a situation where the art director -- we don't like the art director or we don't have the art director, then I recommend from my experience or from the collective experience of others that I am in consultation with as to who that person might be that we hire.

I do very little hiring myself. I usually recommend hiring.

Q All right.

Are your recommendations normally followed?

A Generally speaking, yes.

Q All right.

Are you a member of the Writers Guild?

A Yes, I am.

Q How long have you been a member of the Writers Guild?

A I believe I was accepted in either late August or early September.

Q Of what year?

A Of last year.

Q All right.

And are you a full member of the Writers Guild?

A No. I am an associate member.

Q All right.

MR. LE VINE: Can we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Q (By Mr. LeVine) Did you have a conversation with Allan Griffis by telephone just prior to the commencement of the strike?

A Yes, I did.

Q All right.

MR. LE VINE: General Counsel would offer the stipulation that Mr. Wright spoke with Allan Griffis just before the strike, and it was the day that he received the strike rules.

And he was told by Mr. Griffis that as a member of the Guild, he would have to obey the rules.

And if he "scabbed" he would be expelled and no writers

would be able to work with him.

MR. GOLDMAN: I so stipulate.

JUDGE: Do the rest of you gentlemen join in that stipulation?

MR. KEATON: So stipulate.

MR. MILLER: So stipulate.

JUDGE: All right.

The stipulation is received.

Q (By Mr. LeVine) Mr. Wright, --

MR. LE VINE: Could you please mark this as General Counsel's No. 11.

(The document above-referred to was marked General Counsel's Exhibit No. 11 for identification.)

Q (By Mr. LeVine) Mr. Wright, did you receive any communications from the Writers Guild by certified mail on or about June 2nd, 1973 or June 1st, 1973?

A I received that this morning, if that is what you are referring to.

Q All right.

I'm going to show you what has been marked as General Counsel's Exhibit 11, which purports to be a letter written to you from the Writers Guild, and signed by "Luther Davis" from their Disciplinary Committee.

It is a two-page document with a two-page attachment

which are the strike rules -- the rules of conduct of a member during a strike, and ask you if you have seen this document before?

A Yes, I have.

Q And did you receive it in the mail?

A Yes, I received it in the mail this morning.

MR. LE VINE: All right.

I offer this in evidence as General Counsel's Exhibit 11.

JUDGE: Any objections?

MR. GOLDMAN: No objections.

MR. KEATON: No objections.

MR. FISHER: No objections.

JUDGE: Let me see that.

Can you gentlemen inform mewho Luther Davis is?

He appears on this document as a signatory for the Disciplinary Committee.

Mr. Goldman, do you know of Mr. Davis?

MR. GOLDMAN: No.

JUDGE: All right.

Then am I to accept this on its face value subject to one of you gentlemen showing to the contrary?

MR. GOLDMAN: Yes.

MR. KEATON: Yes.

MR. LE VINE: Yes.

more active than just a person who would be an assistant.

In the course of that employment, several scripts came up where normally the producer might hire the writer to rewrite or polish the scripts in order to meet peculiar production problems, such as the show was supposed to be shot on the French Riviera, and we shot it on the back lot.

And another show was supposed to be shot in the Carribean, and we shot it on the back lot.

And another show was supposed to be shot in North Africa, and we shot that on the back lot, and out by Palmdale in the desert.

Unfortunately, all of the scripts have been tailored in order to be shot in the locations to employ specific landmarks and nationalities; and since we didn't have that at our disposal here in the Los Angeles area, we had to make certain changes in order to actually cut the budgets in half.

So they asked me to make those changes, and I made those changes.

And therefore, I had to join the Writers Guild. And I got a letter from the Writers Guild, informing me that I had to join the Writers Guild; so at that time I joined the Writers Guild.

MR. LE VINE: Can you speak a little louder, please?

THE WITNESS: Sure.

Q (By Mr. Keaton) You said you got a letter from the Writers Guild, and that you had to join.

Did the letter explain in any way why you had to join?

A I cannot remember specifically --

Q The substance?

A The general tone of the letter was that I had been delivering writing services to an associate -- an association company, and therefore I was, you know, being asked to join the Writers Guild because the Association had a Writers Guild contract.

Q Which required you to join?

A I cannot remember specifically. But it implied that I was to join if I was to go, you know, doing any kind of writing services, and for the services I had already rendered.

Q Now, prior to doing this writing that you just described, had you had any professional training in writing of any sort?

A No, none whatsoever.

Q And had you written a screen play?

A I had never written a screen play.

Q To this day?

A No.

Q All right.

And what kind of work did you do when you were rewriting

these scripts; what did you do with them?

A You mean specifically?

Q Yes. How did you change them?

A Well, I had to change the locales of which the action took, and one of the scripts we had a minaret, and a man was being chased around the minaret, and then on the castle walls.

And he jumped into a helicopter, you know, which landed inside the temple walls and took off. Well, we figured, you know, basically, that it would probably cost the entire budget of the picture for a 10-minute scene.

So we then changed it so that it wouldnt happen that way.

So that it would happen on the ground and the helicopter did not have to be seen flying over the walls and over the desert.

We would just have a helicopter sitting there and a guy jumps, and then we cut, and then we are someplace else.

In another instance I had to change -- there were "hells" and "damns" and censorship things that the broadcast standards ofthe network had asked for changes.

So I simply deleted those. It was a matter of editing. Those were the kind of scripts --

Q Did you write any new dialogue for the picture?

A Occasionally.

Q And was it explained to you what that card meant?

A The card meant that I was an associate member, and I could only vote on one issue, and that was whether the strike would be authorized or not.

Q Were you ever gien an opportunity to vote on the adoption of the strike rules themselves?

A No, I was not.

Q All right.

Do you know Mr. Saunders?

A Yes, I do.

Q What does he do?

A He is an executive producer presently of "Adam 12."

Q All right.

And did you ever have a conversation with Mr. Saunders about his wanting to resign from the Guild?

A Yes, I did.

Q How long ago was that, roughly?

A That would have been as early as January; that was the first time the conversation occurred.

And it occurred again in February.

Q What did Mr. Saunders tell you in that first conversation?

A That he had not written for some years, and that he wanted to resign from the Guild because he was certain he would be used by the Guild because he was an executive

producer.

Q And what do you mean "used"?

Would you explain?

A In other words, they would ask him not to cross the picket line because he was a member of the Writers Guild, although he had not written for many years.

So he planned to resign from the Writers Guild.

Q All right.

And did you ever attend a meeting in which Mr. Saunders was present -- a meeting of hyphenates?

A Yes, I did.

Q And did Mr. Saunders say anything at that meeting as to what had happened to his efforts to resign from the Writers Guild?

A He was -- he had written the Writers Guild and the Writers Guild had corresponded back that he would not be allowed to resign because he was a member of the Writers Guild.

And --I can't remember exactly the reason, but the text was that they might consider his resignation after the strike, but certainly not before or during the strike.

Q And do you recall -- excuse me -- how did you happen to go to that meeting?

A I was invited to the meeting.

Q By whom?

A Bob Cinader's office at Universal; he is also a hyphonate at Universal.

Q All right.

And is it your understanding that you were asked because you were a hyphenate?

A Yes.

Q The other people at the meeting were asked for the same reason?

A Yes.

Q All right.

Now, how many people were there, approximately?

A At which meeting?

Q The one Mr. Saunders made the statement that you just testified to.

A At least 60.

Q I beg your pardon?

A 60, at least.

Q All right.

And did Mr. Saunders make any statement at that meeting just to you or was it a general statement to everyone present?

A Well, it was said egenerally, you know, in the course of the discussion because several people there were in the same situation of having not written for several years, and yet were expected to observe the strike rules -- particularly the strike rule of not being able to cross the picket line.

So it was said in a general mannor, and not just to me; although I was sitting next to him.

Q In other words, Mr. Saunders spoke out loud, is what you are saying?

A Yes.

MR. KEATON: I have no further questions.

JUDGE: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE: Mr. Goldman?

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Wright, do you recall when that meeting took place?

A It took place at The Sportsman Lodge.

Q Do you recall when?

A No, but it was some months ago before the strike; I think it was in February.

Q Middle or end of February?

A I believe it was the end of February.

Q All right.

And you were invited by who, Mr. Cinader?

A Mr. Cinader's office called me -- secretary from his office.

Q And suggested you go, or did he say it was a requirement for you to go, or --

A No. It was just a suggestion.

it certainly was not over, I knew what they had done.

And as far as what they were doing, I no more knew what they were doing than what I was going to be doing for sure.

Q In other words, your feeling was that this was a meeting called by some concerned people to discuss various matters of which you were asked to join?

A No. This was -- this particular meeting was simply a group of people who had been through several strikes, or strike situations, or almost strikes, in which they themselves as hyphenates -- that is, producer/directors or producer/writers, or any combination of the sort -- had been called into serious problem on whose jurisdiction did they accept.

I mean when the Writers Guild says you can't go to work because you are a member of the Writers Guild, and the Producers Guild says you should go to work because you are a member of the Producers Guild, and the Directors Guild says you should direct a picture since you are a member of the Directors Guild, and you are all three, which one do you pay attention to?

And which one has moral control over your actions?

Q Who chaired this meeting?

A Bob Cinader chaired the meeting.

Q Bob Cinader from Universal?

A Yes.

MR. GOLDMAN: Yes, sir.

JUDGE: Go ahead.

THE WITNESS: I called the Guild because, since I was a member of the Writers Guild, and they were going to go on strike, and I had received a copy of the strike rules, and at several points, it seemed to me they were in contradiction with my present employment at Universal as associate producer on the theatrical motion picture "Newman."

I asked him specifically, since I had not been employed to write, nor was I writing, nor was I asked to write, nor did I expect to write in the future on that project in particular, since that was what my employment was, how did the Writers Guild rules affect me?

Was I going to be in violation of the strike rules if I crossed the picket line to work?

And that was an inevitability because at least a good portion of the -- not a good portion, but a small portion of the schedule was on studio set which were on that lot.

And he rplied at that time "yes" that I would be in violation of the strike rules if I violated the picket line by crossing the picket line; and I would therefore be referred to the Disciplinary Committee, and I would very likely be banned from Guild membership.

And that if I were banned from Guild membership, that it wold affect me in the future as a producer because other

writers who were members of the Writers Guild would not be allowed to work with me.

Q All right.

And that is what you said to him and what he said to you?

A That is what he said to me. And I said, "Could there be no exceptions?"

And --

Q Did Mr. LeVine ask you the same question basically I asked you?

A Yes, he did.

Q All right.

Now, I would like to ask you -- did you explain to Mr. LeVine just the way you explained it to me?

A To the best of my knowledge, yes.

Q Did you use the statement "If I scabbed, I would be expelled, and no writers would be able to work with me?"

A I do not remember if I said that exactly, no.

Q All right.

MR. GOLDMAN: Your Honor, I would like to withdraw from the stipulation I entered into with Mr. LeVine, counsel for the General Counsel, at this point, since the stipulation was predicated upon there being something in an affidavit form for signing that.

Q (By Mr. Goldman) I would like you to look at -- well,

that you were admitted into the Writers Guild of America approximately August or September of 1972?

A Yes.

Q And what gave rise to your being admitted into the Writers Guild of America?

A What gave rise to it?

Q Yes. What did you do?

A I had done a polish and a couple of rewites on television scripts.

Q For what program?

A For "Cool Million."

Q What programs -- any other programs?

A No. That was it.

Q Is it not true that at the end of January, 1973, you wrote a teleplay?

A I rewrote a teleplay.

Q You rewrote a teleplay for what?

A For a pilot called "If I Had a Million."

Q And what happened to that pilot?

A It was not sold.

Q It was not sold?

A No.

Q All right.

In January what were you employed as?

A As an associate producer.

MR. KEATON: Thank you, your Honor.

JUDGE: Mr. LeVine, do you have a witness we can finish by 5:00?

MR. LE VINE: I am not positive, but I will try.

JUDGE: All right.

Do you need a recess at this point?

MR. LEVINE: No, your Honor.

We call Arthur Ryan.

Whereupon,

ARTHUR N. RYAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Will you state your name, please?

A My name is Arthur N. Ryan.

Q And what is your address?

A 9472 Cherokee Lane, Beverly Hills.

Q And where are you employed?

A Paramount Pictures.

Q What is your position?

A My position is vice-president of production administration.

Q All right.

producer with theatrical motion picture at Paramount?

A Although it is a very broad question, a producer at Paramount oversees all production details usually from the inception of the project through the delivery of the answer print to us for release.

Q All right.

And what kind of responsibilities -- authority does he have in relation to the handling of grievances?

A Usually quite broad responsibilities.

I know that there are grievances that are handled on the set, and the fact that I can't be too specific to me means that he is handling grievances on the set without coming to the front office.

Specifically, he does handle things initially like tentative writing credits, credit to others, grievances over pay.

And the most recent specific example I know of was where a producer handled a grievance over a stunt man's pay.

Q And what is the average range of the budget of a theatrical motion picture that these gentlemen whose names we heard a moment ago would be producing?

A Roughly between $1,000,000 and $6,000,000.

Q All right.

Will you describe to us what difference, if any, there is from a production point of view between producing a motion

picture, a theatrical motion picture, or producing a television series?

A If I can put it slightly in the vernacular, a television series lis like a baseball season, where you go out and play a game a day, and you turn out a game a day, and do the best you can.

Where a motion picture is a one-shot attempt to do something, where you put more money, more effort and more time and more attention to it.

Q All right.

And when in relation to the commencement of shooting is a script written for a motion picture.

A In as far in advance as we possibly can do it.

Q Does it ever happen that the script is being written as you shoot?

A In very, very rare instances, if at all.

There is too much money on the line to allow that to happen.

Q All right.

What function does a director perform in relation to employment of people -- the selection and so on?

A He performs a very large part in the employment of people that he wants to function in his crew.

Q Could you give us some examples?

A Specifically, the director would more than likely, be

allowed to hire his choice of director of photography, for editor -- all of the key people -- production designer,--

Q Does the producer select any personnel?

A The producer will also participate in the same discussions with the director.

He would perhaps choose his associate producer. And initially he may have chosen the writer.

He may have a voice in choosing the production manager and the location auditer.

Q All right.

Do producers have occasion to negotiate collective bargaining agreements on distant locations?

A I'm sorry?

Q Do producers have occasion to negotiate labor contracts on distant locations?

A Yes, they do.

Q And how does this come about?

A The need to -- if you want to shoot a picture in certain areas, you need certain agreements with various of the locals in those areas.

So he is allowed to negotiate with those locals under the supervision of our Labor Relations Department.

Q All right.

Now, you have not been asked that question yet, but I understand that a number of people on the list you were

to be turned over because the Board was satisfied that those notes were not substantially verbatim.

If in the Colton's Sportswear case, the Board held that the notes did not -- in essence, that General Counsel's notes did not have to be turned over because the then Trial Examiner in that case had examined the notes In Camera and found them not of the character that should be turned over.

Now, in the Seine and Line case, the Ninth Circuit held that the Trial Examiner should have examined the notes in that case In Camera and made that determination, and that there was possible error but not prejudicial error in that case in the fact that the trial examiner did not examine the notes.

I intend to follow those cases and examine the notes. Mr. LeVine, call your next witness.

MR. LE VINE: I will call Stanley Robertson, please.

Whereupon,

STANLEY ROBERTSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name, please?

A Stanley Robertson.

Q And your address?

A 20619 Deforest Street, Woodland Hills.

Q Where are you employed?

A The National Broadcasting Company.

Q And what is your position?

A My position is vice-president film programs, NBC Television Network, which is an operation division of National Broadcasting Company, Inc.

Q How long have you held this position?

A I have held this current position since September 1, 1972.

Q Can you tell me what your duties are?

A My responsibilities are the responsibility for the television network and the National Broadcasting Company for the supervision of all programs on film other than specials.

Q All right.

As part of your background, are you familiar with the duty of various supervisory personnel involved in the production of television programs?

A Yes, I am.

Q And could you tell me what the duties of a producer -- of the producer function are at NBC?

A The producer function at NBC very simply is that the producer is responsible for all of the salient elements of a program; putting those elements together, and insuring that

the program is of network quality, that casting is of network quality, the writing, the production, and hiring writers, hiring directors, technicians, associate producers -- being really the man who pulls all these things together.

He is the man who is responsible for all of these various functions.

Q What authority, if any, does the producer have with respect to the adjustment of grievances that arise in the production of a television program?

A The producer normally is the man who has the final authority with -- if there is a grievance with the cameraman or writer or associate producer, or something, the producer is the man who is supposed to solve those problems.

And if he can't solve them, then he has obviously the right to terminate the services of one of the people involved.

Q All right.

Does NBC have a classification called "program department executive?"

A Well, if I may correct you there.

Our category "manager of film programs," or "manager of live programs," or"manager of daytime programs," and -- it is that as opposed to some of the other networks.

And I just wanted to be sure -- I think at CBS it is a "general program executive."

Q Could I have the name again?

A At NBC we call them "manager of film programs," or "manager of live programs," or "manager of daytime programs," depending on the area of specialization.

Q All right.

And could you tell me what the duties of that category would be?

A The manager of film programs duties are to be responsible to me and to the company as a liaison between the various production companies and/or shows to which he is assigned.

An example would be, that each of our program people are assigned to three or four programs.

They work directly with the producer or the production company in the supervision of script material, and the consultation of acting talent, of some below-the-line suggestions, and generally working with the production company and the producer to insure that the program is going to be on the NBC Television Network as A, what we bought and originally purchased as the program, and B, to conform to all accepted standards of the Network policies.

Q What authority, if any, would the program managers have with respect to the hiring of employees?

A If they are employees for the National Broadcasting Company, they really don't have any authority of hiring their own secretary.

If it is in rehtionship to a program -- say it is

produced by one of the people we have a contract with -- a show to which he is assigned -- he has the right to consult with the producer or production company to approve writers, directors, associate producers, and maybe sometimes even cameramen, if we feel that the camera operator on a particular show is really germane to that particular program.

Q All right.

And what authority, if any, would this category have with respect to the adjustment of grievances?

A Very simply: when there is a grievance on a program, which may affect that program's deliverance or quality to NBC, we ask that the program people become involved to try and solve that problem so that A, we don't lose production, or the production quality is less than what we expect it should be.

Normally it is -- he is in the role of a peacemaker because it is like dropping a stone into a pool of water. Many times what appears to be a minor thing can have a tremendous effect.

But what we try to do, and what I try to ask that the program people do is that they work in it as a peacemaker and try to settle it as amicably as possible.

Now there may become a problem in which they can't settle it, the producer can't settle it, and maybe I become involved and try with the head of the studio, or the executive

producer, whomever.

And we try to normally solve it for the best interest of both parties, the supplier and the television end of it.

MR. LE VINE: That's all the questions I have of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: No questions.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

Q (By Mr. Fisher) Mr. Robertson, would you briefly review your own employment history in the industry?

A Right after college and during college, I did free-lance magazine and newspaper articles.

I started at NBC as a page; and after eight years I got in the Program Department as manager of Film Programs.

Three years later I was promoted to director of Motion Pictures for Television which involved supervision of production of our world premiere movies, and our long-form rotating series.

In 1970 I became vice-president in that area and in September, 1972, I became in charge of the entire Film Programming operation.

Q All right.

Did you serve at any time as what you have desribed as a "program manager" then; was that your film responsibility?

A Yes. That was my entry level in the Program Department.

Q Which of those categories of program manager does Mr. Lou Hunter currently fill?

A He is the manager of Film Programs.

Q You have apparently had an exposure on behalf of NBC, to quite a few production companies.

And your experience do the titles "producer, executive producer, director, associate producer," and "story editor" or its equivalent have a uniform meaning, or do they not have a uniform meaning throughout the industry?

A They have a generally uniform meaning.

I think the examples might be made that in certain particular programs, or in certain particular shows, the executive producer may have more responsibility, the producer may have more responsibility, the associate producer may, say, be in post-production, and in another show, he may be the right arm to the producer.

And some people call the story editors the executive story consultants, but generally, they mean just about the same.

But as I said, to elaborate a little bit, they do have depending on the show -- an example would be that Sy Sherman is an executive producer on "Ironside" and David Victor is on the three ABC shows.

They are a little different. The -- their jobs, because

one has three shows, and the other guy only has one show.

The other man would have more authority, be more involved in the overall, where the other guy may be closer to the line exposure.

But generally they are the same.

Q Well, if someone has served -- if you know that someone has served as, let's a producer on any show produced for television in the industry, does that mean something definite to you or not?

Does it --

A Oh, yes.

Q -- tell you anything?

A It tells me that the man has a degree of respect and ability.

Yes, that tells me quite a bit. And my second question would be what the show was.

But I think it does tell me quite a bit about that man. That I know basically or generally what he has done.

Q You testified that the program managers consult with the production companies supplying product to your network?

A That is true.

Q All right.

What is their concern, or what value do they lend to the production company in selecting personnel?

Why does the dproduction company consult with them?

A Well, I think one of our major values is that because of the fact that we are involved with so many production companies, from comedies to dramas to whatever -- love stories, etcetera, that we have a broader view of different people.

We work with -- I imagine in the eight years that I have been in the department, I have worked with just about every studio in town and maybe 3 or 400 producers -- you know, the -- I don't know -- that is just an average guess.

But that is what the ability we have in giving them, that we may know quite a bit of people in the creative community while a producer of one show has only worked -- is working on one show while we are working on two or three shows.

And since we do have a number of shows on our air, we do read a lot of written material, we see a lot of end product rough cuts, or whatever, and we have dealt with a lot of people.

So that our resources -- a resource person would be a good definition, to be able to say "Well, this man did a good job on that show two years ago, and we followed his career and it consistently has been very good as a 'director'"or whatever, or "it is not very good," or "our experience has been that he is not good with action; he is better with the hardcore drama," or "he is better with comedy."

So in talking to his production company, we might

suggest that this man would be A good in this situation, but not too good in that situation.

So --

Q What value, if any, do you assess when making a recommendation regarding a producer or associate producer, or whatever to his ability to work with writers?

A Well, I think in theproduction area and in the associate producer and story editor, obviously I think the ability to work with writers is most important.

It has been our experience that a producer who can speak the language of writers is normally a man who is -- can be very effective in getting writers who may not want to write for this particular show.

As we all know, there are many writers who say, "I am not going to write for this kind of show."

But because of the respect he has for a producer, he will say, "I will write for that show," or because of the relationship he has with the producer.

I think it is most important. Some producers have the ability to get the best out of writers, and some producers do not have that ability.

Some producers can speak to a writer and the writer will know exactly what the man is talking about.

And other people, it takes them quite a bit of time because they don't communicate. But I think in short strokes

that the ability for these people to deal with writers is of critical importance.

MR. FISHER: I have no further questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I have no questions.

JUDGE: You are excused. Thank you very much.

MR. FISHER: I would like at this point -- can we go off the record?

JUDGE: All right.

Let's go off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Mr. LeVine, call your next witness.

MR. LE VINE: My next witness is Mr. Frank Pierson.

MR. FISHER: At this time, could I correct the General Counsel's Exhibit No. 3 with respect to National Broadcasting Company?

I would like to strike names which were incorrectly on that list, and have the record reflect that.

JUDGE: Well, I think maybe we had better discuss this off the record.

MR. FISHER: All right.

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

It is my understanding that all the parties agree that on page six of General Counsel Exhibit 3, under "National Broadcasting Company", the names of Larry Stewart, Art Nadel and Charles Jones should be stricken from the exhibit.

Mr. LeVine, do you agree?

MR. LE VINE: Yes.

JUDGE: Mr. Keaton?

MR. KEATON: Yes.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

JUDGE: And Mr. Goldman?

MR. GOLDMAN: Yes.

JUDGE: All right.

That motion is granted; and we will proceed.

Whereupon,

FRANK R. PIERSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Please state your name.

A Frank Pierson, P-i-e-r-s-o-n.

Q All right.

What is your address?

A Number 20, 29th Avenue in Venice.

Q All right.

Could you tell me where you were employed in February and March of 1973?

A At Universal Studios.

Q In what capacity?

A What were those dates again?

Q In February and March?

A In February I had a services contract as director with Universal for the direction of a picture entitled "Newman."

And later that month, I renegotiated the contract and became producer of the picture.

Q All right.

And what were your duties as a producer during this period?

A Again, beginning in February?

Q When you were a producer?

A When I was a producer?

Q Yes.

A Well, they were the normal functions of a producer, which is assuming the overall responsibility for the assembling of the team -- of a staff and the crew.

And of course, casting the actors. Just generally getting the picture made.

There are some individual differences among producers, of course, in how that is done, but I myself function in

all areas.

And I see to the -- I hire everybody personally and interview them all.

I try to get them together, supervise the discussions that they have with each other in the preparation of the various areas of the production, and -- for example -- a concrete example would be getting the director together with the art director and seeing that the two of them understood what it was that my intentions were as to the look of the picture -- how it should be shot -- whether it should be shot on location, or on the interior set at the studio, etcetera.

Without going into exhausted detail, is that enough of a description?

Q What authority, if any, did you have with respect to the adjustment of grievances?

A Well, I would either arbitrate the discussion of a grievance if it came up between two members of the staff, or if it was impossible to get the two men to agree, then just simply step in and make the decision myself or accomplish whatever needed to be accomplished myself.

Or in the extreme example, I would probably fire the -- one or another of the personnel and replace them.

Q All right.

Now, could you give us some examples of the types of

grievances that arise in the production of a film in which you -- which you resolved?

A Well, I'm trying to think specifically in connection with this, Mr. LeVine.

There was -- for example, when I was -- when I had been going to direct this picture myself, I have made an informal commitment to a particular cameraman.

And when I subsequently became a producer and hired a director to replace me as director, I discovered that this director was unwilling to work with the cameraman who I had -- and not actually employed, it hadn't gone that far -- but I let him know that I wanted him to work the picture.

So they created what certainly seemed to me to be a grievance, and that the cameraman felt he needed the reassurance or security he would gain from working with a -- I mean, the director needed the security that he would get from working with the cameraman with whom he was familiar.

It was resolved by -- in this instance by me meeting his cameraman, and agreeing that his cameraman was equally competent; and I finally decided to go along with his cameraman.

That is the only specific grievance that I can think of offhand, although I could probably think of others if I --

Q Do grievance arise with respect to actors?

A Inevitably. And the -- of every type and kind, and specifically on that show where we are confronted with endless problems in grievances in connection with the star, George Peppard.

Q And could you describe those grievances, please?

A Oh, the -- well, at one point there were some aspects of the script which he did not like.

These were discussed indirectly and in conversations between Peppard and me, and also in a number of memos that he wrote to me in breaking down the script and so on.

Some of these I just simply disregarded. In a couple of cases, I felt that he was right. And prior to the strike situation, I had those sections of the script rewritten.

There were -- and then there were other areas in which I just chose to overrule him.

There was a matter of his -- he wanted to have his clothing for the picture made by the studio, and which clothing, of course, he would keep after the production.

And I refused to allow that to happen.

He wanted to have his own -- to have both a limousine and a studio driver and a self-propelled dressing room -- what do you call it -- that have an Indian name -- they are a kind of self-propelled camper --

Q That's okay.

A But they are commonly available and rigged as dressing

rooms and sleeping rooms, and so on for the use of the stars.

And he wanted to have that instead of a trailer. And the problem there being that he would have to have two drivers, one for the self-propelled number and one for the limousine; and The Teamsters come very high.

So I overruled that also.

Q I think that is sufficient.

JUDGE: Proceed.

MR. LE VINE: I beg your pardon?

JUDGE: Proceed.

I think that is enough detail on that.

MR. LE VINE: I think so too,

Can we go off the record for one moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: On the record.

Proceed, Mr. LeVine.

Q (By Mr. LeVine) Did you receive any phone calls from the Writers Guild concerning the strike?

A Yes.

Q When?

A Well, it was shortly before the -- before the end of the contract date when we all anticipated the strike would --

Q Who called you?

A Allan Griffis.

Q Did you recognize his voice?

A Not at that time. I didn't know Allan; but he introduced himself in that phone call.

Q And where did he call you?

A It was at my office at Universal.

Q And what did Mr. Griffis say to you, and what did you say to him?

A I believe in that specific -- the specific content of that phone call was to ask whether or not I would be available for picket duty.

And I replied that I would be, except insofar as it might interfere with my performance of my job as a producer.

He raised the issue, then, that the Guild might take a strong stand.

Q All right.

And did you have any further conversations with the Guild concerning the strike?

A The following week -- I believe that was about the end of the third week in February, and the following week, Monday or Tuesday -- early the next week at any rate, I called the Guild to get clarification on the proposed work rules.

Q With whom did you speak?

A Again I spoke with Allan Griffis.

Q And did you recognize his voice?

A Yes.

Q All right.

And what did you say to him, and what was his reply, if any?

A It was a very lengthy telephone call and very argumentative, and --

Q Could you please tell me what he said to you?

A I will try to give you the gist of the conversation.

I pointed out to him that -- first, I explained in the simplest possible form that I could, what I was doing; that I was producing a film for Universal which was fully prepared in the sense that the script was totally finished.

And that there were no more writing services to be performed on that Monday or by anyone else.

And that I had a personal services contract to produce that, and that I wanted to go ahead and do that.

But my understanding of the work rules as I received them in the mail, and as they had been explained to me by him, was that the Guild was taking the position that I should not cross the picket line in order to perform any functions.

And he stated that that was correct. And I argued that in the first place, I did not believe that the Guild had any authority to tell me what to do outside of my functions as a writer.

Or in those aspects of my producorial function in which I would be working directly with the writer.

But it seemed to me that this situation was unusually clearcut, and that I would be able to -- and I promised him and I subsequently did -- furnish the Guild voluntarily with a copy of the final shooting script which I intended to produce exactly as it was.

So that they could compare it with the shooting continuity at any later date to see whether or not anyone had indeed done any writing.

And I pointed out to him that furthermore, that the best guarantee that the Guild could have that no further writing would be done on that project would be to have a loyal member of the Guild in the producer function.

Mr. Griffis argued each point simply as a matter of appeal to individual conscience as a writer.

His attitude seemed to be simply that a loyal member of the Writers Guild would not cross the picket line to perform any function at the studio even including the hypothetical case I raised within the -- what if they were a plumber who also happened to be a member of the Writers Guild who is called to fix the pipes at the studio?

And he said, "He would be expected to respect the picket line."

Q All right.

Was anything said with respect to what would happen if you did cross the picket line?

A Yes. He made reference to the clause in the strike rules which specifically threatened reprisals and punishments of various sorts for anyone who violated the strike rules.

I made a specific re -- proposal to him at that point, which was that -- that I -- I pointed out something else to him that was specific to my position as a hyphenate.

Let me see how I can say this simply.

I pointed out to him that in the case of pure writers or people who were just doing writing for a living, that what was going to happen in a strike situation was simply that their work would be postponed until the strike was over, but there would still be just as many motion pictures that were going to have to be written.

And there was still going to be just as many television shows to be written and produced at the end of the strike.

So that those members of the Guild are -- who are dependent upon writing alone for their living, are indeed suffering, and it is not an easy time for them.

But they can anticipate that substatially their income -- their overall income -- their lifetime income -- is not going to be diminished substantially by what happens because of the strike.

They would just have to be working that much harder later on.

Whereas in the case of a hyphenate, it was quite

obviously apparent what was going to happen in my situation; which was if I refused to go to work, the studio would simply replace me with a producer who is not a writer.

And I knew who he would be. He is a member of the Directors Guild as well as the Producers Guild.

And that I would there upon be -- have lost that portion of my income.

And it could never be replaced.

And I regarded this as an undue hardship to place upon a hyphenate, and it would mean that the hyphenates in that particular situation are called upon to make a sacrifice far beyond the sacrifices that any other member of the Guild are called upon to make.

And I regarded that as totally unfair.

And I told him that I would indeed abide by the strike rules without further demur if the Guild would agree to defray my cost; namely, if they would pay my producer's fee, I wouldn't do it.

He got quite angry about that.

Q All right.

And was that substantially the substance of the conversation?

A I think that covers it. We talked for about an hour.

Q All right. Thank you.

MR. LE VINE: That's all the questions I would have of

this witness, your Honor.

Q (By Mr. Keaton) In your conversation with Mr. Griffis, in which you say it lasted about an hour -- and I realize you just made a capsule now, and can't remember all that happened for a full hour --

A Yes.

Q -- did you say anything to them at all about how you felt your crossing or not crossing would affect the Guild strike?

A I told him that I didn't see that it was going to affect the strike in any way, shape or form.

In fact in a rather minor way it would -- it would damage the strike to the extent that Universal would replace me with a producer who was already on their staff payroll.

So they would in effect be saving Universal whatever the unpaid proportion of my producer's fee would be.

Q Maybe I didn't make my question clear.

I asked if you had said anything about your crossing the line would affect the strike?

A Oh, my crossing the line?

Q Yes.

A No, sir. Only in the sense that I have just -- maybe I am misunderstanding you.

What I was saying to him was that I didn't think that my crossing the line or not crossing the line was going to

make any difference to the strike at all.

Q All right.

And what did he say in response to that, if anything?

A He again made a rather emotional appeal to a sense of loyalty as a Guild member.

Q Would you give us the substance of what he said?

A He said that the Guild had the right to expect any member to be loyal to its own picket line, and the only issue here was "you as a writer may not cross the picket line, or you may be subject to fines."

Q All right;

Now, did he say anything with respect to the Guild's intentions in that regard vis a vis the struck companies?

A You mean insofar as threatened punishment or --

Q Insofar as your crossing the line was concerned?

A The Guild's intentions?

Well, he said that they would be -- of course, this was before the strike --

Q Yes.

A -- so we were discussing a hypothetical case at that point.

Q I understand.

A He said that the picket lines would be there, and that I should have -- was going to have to prepare myself to make a decision one way or another.

Q Did he say anything about what the purpose of the lines

would be concerning production?

A Oh, yes.

The purpose was never in any doubt. It was to attempt to curtail production as much as possible.

Q All right.

And is that something you heard him say, or when you say "in doubt", I'm not sure -- is that your assumption or his statement?

A I really have to plead ignorance on that. I can't recall whether that was a specific content of that conversation or not.

But it was certainly the content of many other discussions at that time.

Q Discussions with Mr. Griffis?

A Among us all.

I'm afraid I am confusing you terribly, but it is -- the direct answer to that is, I guess, no, sir, I don't recall.

Q All right.

And did you mention to Mr. Griffis, how much the portion of your salary was that you would lose if you were replaced by someone else?

A At that point my estimate was -- I was being paid a flat fee of $25,000 as a producer, and my estimate was that I would stand to lose a substantial portion -- $18,000 or

$20,000 of it.

Q Did you tell him that?

A Yes.

MR. KEATON: I think that's all we have.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

Q (By Mr. Fisher) You referred in remarks several times to work rules and also to strike rules.

Are those terms different? Or what are you referring to when you talk about work rules?

A You know, I don't recall referring specifically to work rules.

I think I was referring to the strike rules. That I believe was a two-page document with about 17 or 21 points in it.

Q So whenver you refer to rules at all, that is what you were talking about in your testimony?

A I believe so, yes.

MR. FISHER: That's all I have.

JUDGE: Mr. Goldman?

MR. GOLDMAN: May I see the affidavit?

Now, with respect to his trial brief, I take it Mr. LeVine is not handing me anything?

JUDGE: Well, Mr. LeVine, do you have any notes taken in -- from interviews of this witness which may or may not

employed as a producer/director by Universal Studios?

A That is correct.

Q And at the same time, you were also performing writing services for another studio?

A That is correct.

MR. GOLDMAN: I have no further questions.

JUDGE: Mr. LeVine, any redirect?

MR. LE VINE: Yes.

REDIRECT EXAMINATION

Q (By Mr. LeVine) When did you complete the writing that you performed for Fox?

A It is not completed, Mr. LeVine, because I was unable to do any of the work because of the strike.

May I explain?

Q Yes, please.

JUDGE: Yes.

THE WITNESS: All right.

That payment was in advance to secure a contract for the writing -- for writing services.

They paid me that money and the strike came down almost immediately, so at least in the official sense, I have had no further conversations with Fox.

And in any official way I have done no writing.

Q All right.

And was that contract to commence at the completion

right to check these matters for accuracy and authenticity, in accordance with their prior discussion, I am going to receive, and do receive, General Counsel's 12-A and 12-B on the condition that Mr. Goldman have the opportunity to advise me before the close of the hearing as to whether or not he has an objection to their authenticity.

(The documents above-referred to, marked General Counsels 12-A and 12-B for identification, were received in evidence.)

JUDGE: All right.

Now, Mr. LeVine, you have nothing further at this time until your witness shows at a quarter to 2:00?

MR. LE VINE: That is correct.

JUDGE: All right.

Now, Mr. Keaton, do you have any witnesses at this time, or do you anticipate adducing any evidence on direct?

MR. KEATON: Your Honor, as I indicated to you in an off-the-record conversation, we are waiting for Mr. Goldman to advise us whether he will enter into stipulation as to certain items which would make it unnecessary for the Charging Party Association to call any witnesses.

JUDGE: I understand. He has to consult with his client and with other counsel on that.

So, Mr. Fisher, you have the same stipulation problem?

MR. FISHER: Yes. And also, we -- unless the Guild

changes its position, we will have to call one more witness to establish the multi-employer bargaining unit for the Networks.

JUDGE: Well, I will see if I can't discuss that with you gentlemen off the record, and see if I can find out what the problem is.

MR. GOLDMAN: I think I already told Mr. Keaton that I will stipulate to certain letters that he had if he is giving you an indication that I haven't agreed to anything.

JUDGE: Well, I am not drawing any inferences, by the way, from anything you gentlemen say.

I don't know what the problem is other than I think General Counsel made a request a short while ago which Mr. Goldman said he could not agree to.

But there may be special reasons for that.

All right. While we have this time, I would like to clear up this matter which I think will be of assistance to Mr. Goldman, in any event.

As we discussed off the record, Mr. Goldman has informed me that during the time we were in recess last week, Counsel did not have a chance to discuss with his clients the presentation of Respondent's defense because the clients were engaged in collective bargaining in an effort to settle at least some of the issues involved.

And for that reason, Mr. Goldman, if I understand, you

AFTERNOON SESSION

1:45 P.M.

ADMINISTRATIVE LAW JUDGE: On the record.

Mr. LeVine, is your witness here?

MR. LE VINE: Yes, he is, your Honor.

JUDGE: All right.

Proceed, Mr. LeVine.

MR. LE VINE: I will call Sidney Kalcheim.

Whereupon,

SIDNEY KALCHEIM

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Please state your name.

A My name is Sidney Kalcheim.

Q What is your address?

A I live at 18283 West Wakecrest Drive in Malibu.

Q All right.

Where are you employed?

A I am employed by Screen Gems at the Burbank Studios.

Q In what capacity are you employed?

A I am the executive assistant to Arthur Frankel, the vice-president in charge of the studio.

Q All right.

And how long have you held this position?

A For one year.

Q And could you tell me what your duties are?

A My duties involve negotiating deals for writers, directors, producers, acquisition of rights, overseeing the general managerial and administration of the studio as delegated to me by Mr. Frankel, as well as other productions and post-production duties.

And it also includes settling grievances and problems, and being a general troubleshooter as things come up.

Q All right.

In the course of your duties -- well, let me ask you, what authority or responsibility do you have, if any, with respect to the hiring of employees?

A I make recommendations as to material writers that come in; and most particularly with regard to new projects that come through the development area.

And --

Q Are your recommendations generally followed?

A Pretty often, pretty often -- most often.

Q All right.

And what authority, if any, do you have with respect to the adjustment of grievances of employees?

A When something comes up and I am asked to I get into

it, particularly since we are talking about writers with regard to Writers Guild members, a couple of things have come up in the past year with regard to credits and with regard to disputes as to submitted material.

And through my own good offices and knowing the people involved, I have talked with them, and we have gotten things straightened out as they should be.

That goes the same way for things that happened within the studio.

Q All right.

Are you a member of the Writers Guild?

A I am a member of the Writers Guild -- associate member.

Q And how long have you been a member of the Writers Guild?

A Since 1959.

Q All right.

Now, in the course of your duties as executive assistant to Mr. Frankel, do you write any scripts or perform any writing services in the course of your duties?

A No, I don't.

Q All right.

Did you receive the strike rules from the Guild?

A Yes, I did.

Q All right.

And do you recall when?

A Screen Gems is the television division of Columbia Pictures Industries, Inc.

Q And are they both located on the same premises?

A Yes, sir.

MR. KEATON: May we have one second?

JUDGE: Yes.

Q (By Mr. Keaton) All right.

Now, did you receive any communication from the Writer's Guild either by telephone or in any other manner in February, 1973, concerning the strike rules?

A Yes. I arrived home one night in late February and a Mr. Jerome Ross, whom I didn't know had called and left a message for me to call him at a particular number.

I got the impression from the message that it had to do with the impending, as it seemed at the time, strike.

And I returned the call and what it turned out, was --

Q Excuse me.

Who did you talk to when you returned the call?

A When I returned the call I talked to him.

Q You talked to Mr. Ross?

A I talked to Mr. Ross.

And he was simply calling me to assign me picket duty in the event there was a strike .

And I pointed out to him what my current employment was, and is.

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And I said that I didn't feel that the Guild should be asserting jurisdiction over me or asking me to picket in my current capacity.

And after a short conversation, I wound up speaking with Carey Wilbur, who was also there and who was also a friend of mine.

And at one point as an Agent I represented him.

And --

Q Excuse me. Before you tell me what Mr. Wilbur said, do you know what, if any, capacity Mr. Wilbur had in connection with the strike?

A He was on the strike or tactical committee or something of that nature, but he was --

Q Of the Guild?

A Of the Guild, yes.

And he and I discussed the matter. And he said that he was going to put me down for a tentative okay on strike duty -- for picket duty.

And I said that he could put down what he wanted, but I had reiterated my position to him as well as to Mr. Ross.

And that was the end of it as far as I was concerned.

Q And what did he say to you in response to that?

A Nothing. It was really a personal comment that wound up in mutual good-byes; that is all.

He indicated that the strike rules applied to me as

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did Mr. Ross.

And I disputed that.

Q All right.

Was there any discussion at all about honoring the strike, rather than just walking the picket lines?

A Yes. I was told by one of them in the course -- I couldn't say who p- that I wasn't supposed to be crossing Guild picket lines.

Q Were you told what would happen if you did cross?

A Well, I got the clear impression -- although I'm not sure it was in that conversation or from the subsequent communications from the Guild that there would be disciplinary action taken against me by the Guild.

Q Any indication of what kind of disciplinary action?

A I really didn't know. I assumed some sort of fine since I was told there was $100 a day fine to be imposed for not picketing on an assigned day.

Q Who told you that?

A That was told to me by, I think, both Jerome Ross and Carey Wilbur.

MR. KEATON: I have no further questions.

MR. FISHER: No questions.

JUDGE: Cross-examination?

MR. GOLDMAN: Yes.

May I see an affidavit?

let the record show that I am showing to the Guilds' Counsel a document that will be marked as Association Number 4 for identification.

(The document above-referred to was marked Association's Number 4 for identification.)

MR. MILLER: Can we go off the record?

JUDGE: Off the record?

MR. MILLER: Yes sir.

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

MR. MILLER: Would the Reporter please mark identification as Association's 4(a), 4(b) and 4(c) these documents.

(The documents above referred to were marked Associations 4(a), 4(b) and 4(c) for identification.)

MR. MILLER: Let the record show that the Reporter has marked, as Association's Number 4(a), a reprint from an article of the"Hollywood Reporter" dated April 16, 1973 entitled"Major Lock Hyfenitz (phonetic) will be tried as Scabs," and I am now showing a copy of this article to Counsel for the Guild.

And let the record show that the Reporter has marked for identification, as Associations Number 4(b) a reprint of an article from "The Los Angeles Times" of April 15, 1973 entitled, "Guild Charges Webb by (?) picket line," and I am

showing Counsel for the Guild a copy of same.

And let the record show that the Reporter has marked for identification, as Association's Number 4(c), a reprint of an article from "The Daily Variety" dated April 16, 1973 entitled, "WGA Indicts Five at Universal for Strike Violations," and I am showing copies of this article to Counsel for the Guild.

Your Honor, at this time the Association proposes the following stipulation: that Allan Ritkin, Public Relations Director of the Guild caused to be sent to the "Los Angeles Times,""Daily Variety," and "The Hollywood Reporter" copies of the press release contained in Association's Exhibit marked for identification, Number 4.

JUDGE: All right.

Is it stipulated, gentlemen?

MR. GOLDMAN: Yes.

JUDGE: Any objections from General Counsel or Mr. Keaton?

MR. LE VINE: No sir.

MR. KEATON: No sir.

JUDGE: All right; that is received.

MR. MILLER: Your Honor at this time the Association's Exhibits for identification Number 4 along with number 4(a), 4(b) and 4(c) be admitted into evidence.

JUDGE: Let me take them one at a time.

Is there any objection to the receipt of Association's

Number 4?

MR. GOLDMAN: No sir.

JUDGE: All right.

Hearing no objections, Association's Number 4 is received.

(The document above-referred to marked for identification as Association's Exhibit Number 4 was received in evidence)

JUDGE: I understood from the Parties while off the record that there was no dispute as to the authenticity of the three press clippings; and that is, that they are press clippings from the papers from which they purport to come; is that correct?

MR. GOLDMAN: Yes sir.

JUDGE: All right.

Now, is there any objection to the receipt of 4(a), (b) and (c)?

MR. LE VINE: No objections, Your Honor.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Well --

JUDGE: Mr. Hackler?

MR. HACKLER: I would like to inquire the purpose of the--

JUDGE: Mr. Miller, do you want to state your purpose?

MR. MILLER: Yes, Your Honor.

The purpose of 4(a) and 4(b) and 4(c) is to show that in connection with Rule 30 that the item contained in the

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(The documents above-referred to were marked Association's Exhibit Numbers 5 through 8 for identification.)

MR. MILLER: Let the record show that the Reporter has marked as Association's Exhibit Number 5 a letter on Writers Guild of America stationary dated February 2, 1973 and addressed to Walter S. Hoffman, and signed by David Harmon, Secretary, and that a copy of the said letter has been provided to Counsel for the Guild.

At this time, Your Honor, the Association proposes the following stipulation: that on or about February 2, 1973 the Guild by letter reactivated all members who had withdrawn from the Guild within the preceding two years, and that an authentic example, excuse me -- an authentic example of the Guild's reactivation letter is contained in Association's Exhibit Number 5.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I will so stipulate.

JUDGE: Any objections from the other parties?

MR. LE VINE: None.

MR. GOLDMAN: I would like to make sure that Association's Exhibit Number 5 is legible so you can read it, Your Honor, and if not I would like to read into the record what --

MR. MILLER: Your Honor, at this time I would to move to admit Association's Number 5 into evidence.

JUDGE: Well, I will receive the stipulation.

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MR. FISHER: Your Honor, the Guild has volunteered to get a better copy of that particular letter, and I would suggest we put that in for marking at this point and then substitute it when they supply it.

JUDGE: I think that that is very nice that you are getting that cooperation and I would appreciate it.

All right, before the end of the hearing I would expect some better copy of this document.

All right, Mr. Miller, are you finished?

MR. MILLER: No I am not, Your Honor.

The Reporter has marked for identification as Association's Number 6 a 3-page document headed "Attention," and it is dated April 9, 1973 and "Subject: Strike and Discipline," a copy of which has been provided to the Guild Counsel.

And the Guild is willing to stipulate that Association's Number 6 -- the Association offers to stipulate that Association's Number 6 is an authentic document, copies of which were sent to all members of the Guild by the Guild.

JUDGE: Mr. Goldman, may that be stipulated?

MR. GOLDMAN: Excuse me.

JUDGE: All right.

MR. GOLDMAN: Yes, we will so stipulate.

JUDGE: Any objection?

MR. MILLER: I would like to add to the stipulation,

Your Honor. That it was sent on or about April 9, 1973.

MR. GOLDMAN: So stipulated.

JUDGE: That is the date that appeared on the document?

MR. MILLER: Yes it is, Your Honor.

JUDGE: All right.

It is accepted. Are you offering that document?

MR. MILLER: Yes, Your Honor, I offer Association's Number 6 into evidence.

JUDGE: Any objections?

(No response.)

JUDGE: Association's Number 6 is received.

(The document above-referred to marked for identification as Association's Number 6 was received in evidence.)

MR. MILLER: Your Honor, let the record show that the Reporter has marked for identification as Association's Number 7 a 5-page document, the first page of which is a letter on Writers Guild of America Stationery, dated May 7, 1973 addressed "To All Members," signed by Ranald MacDougall, President.

The Association proposes the following stipulation: that this letter and the document attached are authentic documents and were sent to all members of the Guild by the Guild on or about the 7th day of May, 1973.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes sir.

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Party before the end of this hearing having the opportunity to correct any errors that occur -- have occured on that document.

Now I understand, Mr. Goldman, before I ask this next question of Mr. Levine -- I understand, Mr. Goldman, you do not wish to recall any of the witnesses named in the outlines given you this morning?

MR. GOLDMAN: That is correct.

JUDGE: All right.

Mr. LeVine, are you in a position now, to rest your case?

MR. LE VINE: Yes, I am, Your Honor.

JUDGE: So you rest?

MR. LE VINE: I do.

JUDGE: Mr. Keaton?

MR. KEATON: We would like to offer a stipulation which we have discussed during the recess. I would like to offer to stipulate that if Mr. John Mandonza, resident Counsel of the Guild, were to testify in this proceeding, he would testify as follows:

That it is one of his functions to present evidence on behalf of the Guild at the Guild's disciplinary proceedings.

And that he has taken the position at the disciplinary proceedings brought by the Guild against persons holding the positions listed in the complaint in Section 6; and that such

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persons are subject to discipline for crossing a Guild picket line without regard to whether they cross the picket line for the purpose of performing bargaining in its services for a struck employer or not.

And that the charges will properly lie for crossing the picket line even if the person charged has given assurances to a representative of the Guild that he is not and will not perform any ranking services for the struck employer.

MR. HACKLER: It is so stipulated upon the conditions that you vindicate the subpoenas.

MR. KEATON: That is my intent.

MR. HACKLER: Addressed to Mr. Mandanza.

JUDGE: All right.

Now, just one fact; you have a copy of the complaint before you?

MR. KEATON: I do.

JUDGE: You referred to certain categories as appearing in paragraph 6 --

MR. KEATON: Excuse me, Your Honor --

JUDGE: -- and I rather suspect you meant paragraph 9.

MR. KEATON: Thank you very much, Your Honor, I did mean 9, and if Mr. Hackler will --

MR. HACKLER: I will accept that change.

MR. KEATON: Thank you, Your Honor.

JUDGE: Any objections to the stipulation?

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Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Goldman) Will you please state your name for the record.

A My name is Gene L. Coon.

Q What is your business address?

A At the moment I write out of my home, 8015 Briar Summit Drive, Los Angeles 90046.

Q Now what is your trade or occupation?

A I am basically a writer -- producer in television -- series television.

Q All right.

And how long have you been a writer/producer in television?

A I have been an active writer in television since about 1953, and I have been an active writer/producer in television since, I believe, 1964.

Q All right.

Now, can you give us an indication of the number of scripts that you have written for television as a writer?

A Approximately 300; most of them were one hour scripts, and there were several dozen half-hour scripts and a couple of dozen 90 minute scripts.

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timelock on the safe and the timelock is connected to a bomb; and our hero has to break that safe open by ten minutes to ten, but unfortunately at fifteen minutes to ten he breaks his arm.

And now you have got -- I wouldn't recommend selling it -- but theoretically that is a dramatic situation.

Now, we like this premise and we talk it out, the three of us -- the story editor, the producer and the writer.

And if we like it enough and we think it works, we say to him "okay, you have got the story deal. Go home and put it down."

And at that moment the writer is employed, and at that moment hopefully the writer goes right back home to start to write that story.

He may well have to finish another script before he writes that story but he won't tell us that. In about five or six days the writer will come back with what is known as a story outline or treatment.

A story outline is telling in prose -- not screenplay form but in prose of the story line -- the action, the dramatic incidents -- without dialogue that would eventually and hopefully be translated into the screenplay form.

Now --

Q Excuse me.

MR. GOLDMAN: At this time I would like to have this marked for identification.

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At the conclusion of that story conference in which you really have three writers, although two of them bare different titles --

MR. KEATON: Objection. I would move to strike as a conclusion. It is going way beyond the question.

I don't think the witness should be allowed to testify in narration. He was asked a totally different question.

He was asked the simple question, "Is this document an example of what you use?" And he should have said "yes".

JUDGE: I think he was asked what occurred with respect to the document.

MR. KEATON: No, Your Honor, that question was not asked. That was a question I wanted to object to and I was anticipatory and it never came.

JUDGE: All right, gentlemen.

MR. GOLDMAN: Could you shorten the issue a little bit.

Q (By Mr. Goldman) Could you describe for the record, Mr. Coons, the process which a writer, producer and story editor goes through to arrive at a treatment or story outline?

A It is four words: a joint creative effort.

A premise is never complete; a premise is an idea. The writer who comes in usually does not know the show. He does not know the characters and he does not know how the characters will react given a situation.

He may not even know the format of the show even though

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the basic formats of television series are pretty well cut and dried.

The writer comes in, and in the process of a multi-hour story conference, that premise is expanded and adapted verbally, unless there is a secretary present which there sometimes is, into the bones of a story outline.

The story outline though it is talked out and generally constructed in this verbal dialogue between these two or three people -- the producer, the story editor and the writer -- the story outline itself is then written over a period of five to six to ten days by the freelance writer.

And that is, assuming first of all the producer manages to convince the network that they should allow them to go ahead with this sort of premise; they usually clear a premise with the network.

Given the passage of --

Q Could you explain to us what you mean by "clearing the premise with the network?"

A Well, virtually everything on television as far as the programming -- the program content must be cleared by two departments at a network, the network continuity acceptance or whatever the name may have at the various networks and the network programming department as represented by an assigned contact of that series.

Every story premise must be okayed by them; every completed

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story outline must be submitted to them and okayed. And every, hopefully, completed script -- and I say "hopefully" because scripts odd enough are almost never completed in a very real sense -- the completed script too must be okayed, and the various objections and changes that the networks raise must be accomplished after the conference with them.

And this is usually done by telephone or memo.

Now, at the conclusion of the story conference, the writer goes home and he comes back in five days later with something very much like this fifteen pages.

And --

Q And when you say "this" you are referring to Respondent's 5?

A Respondent's 5, yes. Almost never in my experience has a first draft story outline come in that is acceptable. I don't know why this is; possibly because none of those writers write like I do. That is my ego operating.

And maybe it is because it is off -- it doesn't fit the story, doesn't fit the format of the show.

He might have done some things that I as a producer know will not be acceptable to the network or the studio executives --

Q Such as?

A Well, on the series "It Takes a Thief", for instance, I was line producer; I had two associate producers, one of whom were the story supervisor and one of whom was primarily a

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production man. And I had an executive producer. At the beginning was a gentleman named Gordon Oliver, later on it was a gentleman named Jack Arnold.

And then there are gentlemen further up the line -- and I utilized Universal at this time -- citing(?) a man like Frank Price to whom Gordon Oliver would have been responsive to.

Seldom did Mr. Price come into play during the story portion of this, although he usually was apprised of the premise. And if he liked it then he would pass the word on down and say "fine, go with it."

Now, the first draft of a document similar to R5 would come in and I would call my story editor in if I had one, or I would do it myself if I did not, and have a meeting and work on it and see what changes had to be made in it to make it -- the blueprint of what we would conceive to be a satisfactory screenplay.

Q Could you stop there for a moment.

What happens to the freelance writer who has turned in Respondent's Number 5 to you; has he been paid for Respondent's Number 5?

A He will be paid -- I've never been too much involved with these administrative details, but he would be paid on delivery of the -- I believe of the first draft of the story, and possibly on the delivery of the revisions which are usually

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minor. That is a story payment.

And in the writers breakdown we have a story payment, a first draft payment and a final draft payment. That is the story payment, which was up until recently $900, I beleive.

Now, it is conceivable incidentally that if that story comes in in such bad shape in its first draft --or even its revision -- and I make the judgment that this writer is not going to"cut it," and I made a mistake, that the story doesn't work, then I might very well exercise what is called a "story cut-off."

He would get his money and the story would be shelved or assigned to someone else.

In the case of the shows I usually -- I produce, when a story cut-off is exercised, ordinarily if I want to use it, I would never assign it to an outside writer.

In the interest of economy I would do it myself or have a story editor do it.

But lets assume that it is a pretty fair first draft of a story outline and I have had my meeting with my story editor. We call the writer in and we tell him any additional changes we feel need to have to be done before we can submit it to the network and to the executives.

Hopefully these are minor; and indeed they usually are.

Two or three more days later he will turn in essentially R5 which is our first and second drafts of a story outline.

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Now at that point I have no right as producer or story editor to ask anymore work on that from the writer. He has committed his contract -- he has fulfilled his contractual committment up to this point.

If I have some minor changes I would like to have done in this, I will make them or my story editor will make them before we submit them to the network.

We may do this for many reasons. We may do it because we feel that the person who it will be submitted to personally will like it better.

I must be honest with you when I tell you that we will occasionally put in something we know that they are going to take out; because that makes them feel useful, and I certainly think that they should feel useful.

And the script being adjudicated okay by me and my story supervisor and the executives of the studio, it will at this time be submitted to the network for approval to go ahead with the screenplay.

And by this time it usually gets an approval.

There are cases, of course, where a story might be totally innocuous one day and get an okay and the next day on the news the President is assassinated, and that is what the story is about and you're going to use "story" obviously.

But generally speaking at that point the network gives its okay with certain cautionary memos sent in, such as "be careful

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of no open mouth kissing," and so on. And at this point with any luck at all you call the writer in and you say, "all right, go ahead with the screenplay."

Now I would point out that what I gave you is one script. If we are starting a series we are doing this with 12 writers or 16 writers or 22 writers; we have them all going at once.

So the first three or four months of preparation of a series really is based on getting the writers in, getting the script written, getting the stories okayed and getting the scripts written, and basically having something to shoot from.

Q Usually, when does the first three or four months of a new season commence?

A I would say from about April to possibly July -- I would say you had better start shooting your show in July, I would suggest, or you are going to have trouble making September.

I would say that under optimum conditions -- let me make that average conditions -- if your writer doesn't bomb out on you and you are a capable man and you have got good people working for you, then about 10 weeks from the day of the first interview with your writer you will have the scripts ready to shoot.

And that is assuming nothing terrible goes wrong, which it usually does.

At any rate, we now have a writer writing a screenplay. Hopefully you have got 12 or 15 writers writing a screenplay.

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Now, when he turns in his screenplay you have got a story that works. And if he is a skilled professional writer he will make the story work because the story does work.

Nonetheless in the 100 or 125 television show that I personally have produced I never have had a first draft screenplay come in that I could shoot or anything like shooting.

They always need rewrites. At this time when he submits his script, and this is usually two or three weeks after I have told her to go ahead on his script, I will take the script and give a copy of it to my story supervisor if I have one and we will read it and root about it for a few days and then we will come in and have a conference.

And then we will point out the various weak points that we have discovered and we will reach a conclusion and a meeting of the minds and -- as to what should be done to the script in the rewrite stage; at which time we call in a writer and get in a fight.

Because no writer likes to be rewritten. He wrote it the way he wrote it because he thought it was right.

Now, we don't think it is right; we know our show. And so ordinarily we have a little unpleasantness, but you try to make it as pleasant as possible. And hopefully you can convince the writer that these changes shall be done.

Now, I can recall many times when I couldn't convince a writer, and he said "I won't do it" and I said "Well, suit

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yourself, because if you don't I'm going to." And that usually does it; they usually will.

In the course of this really third meeting by now, the writer is zeroed in pretty well on what the production unit is requiring of him. And if there are no major difficulties such as structural difficulties, for instance, which can pop up in the first draft screenplay that you didn't notice in the story, he will have a -- I guess we call it a "second draft" back in a week or so.

And the same process will happen again. And then we go to the producer and the story editor; because we are entitled, to, yet, one more process with the writer -- the polish, which is the final process.

Now, this is all very evolutionary. In most cases in television -- and there are few exceptions -- the production executives would deal with the writers -- four writers who are serving in additional capacities. And I think the reason for it is because the whole step is a created process.

It is a brainstorming session, and -- well, I've often said that if you had a tape recorder going on at one of these story sessions, that at the end you would have a story written if somebody would transcribe it with proper editing.

At any rate, at the end of an evolutionary process you have what you fondly believe is a final draft screenplay -- teleplay -- and paradoxically enough this is the point the

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writing begins. I know that sounds very strange.

When a screenplay comes in after polish and after the story editor and the producer have gone over it and made any pencil changes they want to and bring it up to what they consider perfect at that time, not knowing the problems which will develop in the future, he will take the author's final draft, duly annotated and amended, and submit it to the mimeograph department and get mimeographed copies out at which time he will distribute it to his production staff; which is usually -- in my case is always studio-assigned -- to his story editors, the associate producers and the executive producers and the officers of the corporation who are on a list.

And I would say the usually distribution at this time is about 25 copies. Now, at this point the producer and the story editor have run out of writer. The writer has done his best, we must assume, to bring that script upto the condition that the producer and the story editor want it to be.

He has completed his contractual committments.

And then to our great dismay we find out three days later -- a week later -- that there are changes to be made. And this is the process that sometimes is downright staggering, there are so many changes to be made. And --

Q You said that the writer's committment is ended?

A After a story first draft, second draft and polish.

As a writer, then you are given as I understand it the assignment and you have to get your outline or treatment in within a few days, and if that is accepted then they have an option of hiring you to perform the screenplay plus -- I mean the teleplay plus a polish and a rewrite; is that correct?

A That is correct.

Q All right.

Now let's assume you have handed in the final teleplay with polish and the rewrite and your services are no longer required, do you as a writer -- have you ever been called back by a studio to engage in the rewrite services?

A On my own property?

Q Yes.

A After I have gone through the usual steps?

Q Yes.

A Possibly once or twice in 300 times; I'm not sure, I can't remember.

Q All right.

Now, out of those 300 pieces of literary material that you produced, how many of them after the final teleplay and polish and rewrite have been sent to the studio, how many of them have revisions made in them?

A Possibly 96 or 97 percent, and possibly higher than that. It is extremely rare to have a writer's final -- anybody's writers final draft. Even when I write a script that I am

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overall structure of that teleplay, but its details. The characterizations that are involved, the dialogue, and the interrelationship among the characters.

Also if for example it is a suspense piece or a mood piece of any kind, that aspect of it which is usually the most difficult to capture properly.

Q After this session what usually occurs?

A A rewrite session. That is as a result of that conference I will have a good idea of what and usually this will be fairly and passionately argued conference and sometimes can last very long.

We will arrive at what usually turns out to be some sort of compromises between what I believe should be done and what the people I am talking to believe should be done.

My own view is that these people know the show better than I do and so in cases where they are talking about things which are inherent in the show, the characters, the running characters of the show, production problems, these kind of things, I don't argue very strenuously about.

If it is in terms of dramaturgy, then I feel that I am rather passionate in defense of my own approaches here and so these are the things which we will hassle out between us.

Q Assuming that next step is completed, then what follows?

A I will then do the rewrite that is involved and this might vary from very simple rewrite to a very extensive one,

depending on the problems that appear in the material.

I will submit that and that is commonly called the second draft.

After that we will go through exactly the same process except it will be on a more limited scale. That is instead of dealing with larger issues such as the interrelationship of characters and the defining of the running characters and the plot line of the piece, the next revision which is generally called the polish for the writer, generally deals with just that, polishing, honing the material. Trying to make the dialogue better, more satisfactory. Trying to make it - trying to make your effects more dramatic. Trying to meet very specific production problems that may arise and generally just honing the work.

Q Assuming that that is completed, the so-called polish, what next occurs then?

A At that point that is generally the end of my involvement with that script. That is all the company is entitled to unless they wish to pay me more and that is generally the end of my involvement with the material.

Q Does that product that you hand over have a name?

A It is usually called a final draft if it is in the shape that is something approximating what the people involved in the show are reasonably satisfied.

It may or may not at that point be mimeographed or at

as is the case is with most new series, sometimes it does mutate. When you start actually doing the show sometimes the premise which you thought would work exceptionally well does not always work, or you discover new facets or new potentials. This was the case to a small degree or a certain degree with Kung Fu.

Q With respect to the recommendation of hiring of writers, I take it these were free lance writers and not staff writers?

A Correct. All free lance writers.

Q Could you explain the process you went through with hiring or recommending to hire these individuals?

A Yes. From my own recollection; from my own experience with other writers and from recommendations that came from agents I would in effect compile a list of writers who I thought would be valuable.

As I say in each case, I asked to read material from those writers and based on my then evaluation, would recommend them.

Q Evaluation of materials that they had written prior to your making the commitment --

A -- Yes. This was a new series and consequently it was not a case of my reading episodes of that same series which they had written before. I had to make some kind of value judgements based on a style of writing essentially. Their ability to handle certain things that I wanted.

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Q I believe you stated that you recommended a few writers and some were turned down by the studio?

A No, by the network. By ABC.

Q Was any reason given by the network for turning down the writers?

A The reason essentially was that they felt that they had had inadequate experiences; that is inadequacies in the writer. Whether that was because they felt that they were -- their writing was inadequate or there were personality conflicts with them, they did not specify.

I resisted each of these turned down because of several things; not the least of which was I had spent so much time winnowing through the available writers, but I was persuaded that -- quite honestly I just did not have the time to fight through any of these people.

Q Now with respect to the individuals you selected, what next occurred?

A As this show had never been on the air except in a 90 minute version -- this is an hour series -- it had never been on the air and because I wanted to make some very specific demands on the writers, I would call the writer in and show him the pilot and then discuss in great detail what I thought the show was about; what I wanted from them; the kind of story; and particularly the tone of it.

I perhaps should speak about that a little bit.

This obviously presented many, many difficulties and special situations which I felt were very important to the success of the show and very important to the integrity of the show.

In addition to that Kung Fu is a neglectic (eclectic?) system. That is it is what individuals make of it. They draw on Confucianism; on Buddhism and Taoism as well as a subsequent development and I wanted therefore to develop a kind of system of our own which would grow and perhaps mutate through the course of the series and which did indeed.

I had occasion to say many times to people that essentially I was the bible of Kung Fu because there is no such written record.

What I wanted again to be certain of was that while we were fictionalizing, that there was some integrity into what we were doing.

Again I have forgotten the question.

Q What next occurred with the writers you selected?

A I would bring them in and go through some of what I have just been saying to you except in much more specific detail, and I would tell them that I wanted a very -- I was at the same time writing my own episode -- I wrote the first episode -- and when I had developed my own story I was able to show writers what I had done as an example of what I was looking for.

I would tell the writers that because I had selected

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them with such particular care, that I expected them to write a script. That is I would help them to get through the stage where normally they would be or might be cut off with an option.

That is I said this both to express a confidence in their ability to do it and recognizing the fact that I thought it was a tough show to write and especially under the time pressures we were under and that I was therefore volunteering to help them to the maximum extent possible.

We would then sit down and in most cases find a premise between us. In a few cases writers came in with a premise in mind by which I mean a springboard, something to generate a story.

Q Excuse me. Does that mean you recommended the hiring of these people without a premise?

A. Yes.

Q. Okay.

A. When we found the premise that I thought might be productive and which was or seemed to fit our series, I would generally spend some time with the writer beginning to explore it, and hoping also to generate some excitement in him, believing as I think many people do that if you can excite a writer about the material, that he will do a better job.

The writer would then go home and develop -- I encouraged the writers to come back before they had written their outline,

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to come back and discuss it with me verbally.

I told them that this would possibly save us both time and most of them were very anxious to do that and we did in most cases, did that.

IN the first four outlines that came in I was very unhappy with all four of them which is not unusual because we all have expectations higher than possibly usually. On top of that I was at the same time having a great deal of difficulty with ABC in terms of the one script which was my own.

Somewhere along here I completed my script.

I was having troubles in terms of the concept of the show and some of the things that I was enunciating to you before in terms of where I wanted that show to go, the tone of the show, and the proportion of action - physical action in it as opposed to the flashbacks which generally were very static.

In coping with the problem which I first enunciated, that is that we had a man - a peaceful man - who was capable of extraordinary and rather excitingly visual violence, and in a very violent time and place and where that tension was the essence of the series.

As a result of both of those, my disappointment and the problems I was having with ABC, I then in each of the first four outlines, wrote very extensive detailed memoranda -- I dictated them.

In most cases the outlines that came in varied from

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around 12 to 25 pages -- no, I don't think there were any quite that short -- about 15 to 18 to 25 pages. I double spaced.

I then wrote memoranda which frequently turned out to be almost half as long as the original outline.

This took me a considerable amount of time obviously, because I was trying to be as specific as I possibly could be, not in citing my objections, but in citing specifically detailed things which I wanted them to include in the revision of the outline.

JUDGE BARBAN: If you will excuse me -- Mr. Goldman, I hate to interrupt this because it is tremendously interesting, but I think we are getting a little bit away from the issues, are we not?

MR. GOLDMAN: I don't believe so, your Honor. I am trying to find out what a story editor ; how he functions as a story editor.

JUDGE BARBAN: The witness is giving you evidence that you had anticipated?

MR. GOLDMAN: Yes.

JUDGE BARBAN: All right. Proceed, Mr. Furia.

THE WITNESS: Subsequent to that I found it in my practice of detail memoranda was just impossible in terms of my own time. I was working seven days a week and frequently 14 hours a day and subsequent to that, again I believe in every

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case, I did this same thing but I did it verbally. That is in meetings with the writers rather than taking the time to set it all down. It takes longer to write it down than it does to do it verbally.

After this the writers would bring in revised outlines; quite obviously very extensively revised outlines, and in most cases I did have them do some changes in that outline.

In many cases I myself did subsequent changes in the outlines before I submitted it to ABC.

Q (By Mr. Goldman): Now lets assume you have a completed script and you sent it to ABC.

A I sent the outlines.

Q I mean the outlines to ABC. What problems if any would you have with ABC concerning acceptance of the outlines?

MR. KEATON: I will object to that as immaterial and irrelevant. We are not concerned in these proceedings with what objections ABC might have.

MR. GOLDMAN: Your Honor, there is a possibility that whatever dealings he has with ABC, those dealings could eventuate in further writing activities on behalf of the story editor as well or perhaps the individuals who bought it.

MR. KEATON: Your Honor, we are not trying an R-case here, we are trying a C-case. We aren't trying to determine what employees in a bargaining unit do. The story editors are not even in the bargaining unit.

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I might add that there were two reasons for doing this.

MR. KEATON: Objection. He is not being asked. The witness should not volunteer.

JUDGE BARBAN: Overruled.

THE WITNESS: My reason for doing this were that first I had run out of contractual commitment from a writer; that is he had done everything he was obligated to do for the amount of money he was being paid and secondly, because as I have indicated I was quite clearly the one most familiar with the material.

Q (By Mr. Goldman): Now when you said -- I would like to get more of an explanation -- can you give me an example of the types of revisions that you were required to make as a story editor?

A In outlines or in scripts?

Q In outlines.

A Yes. One story dealt -- I will try to be as concise as I can so as not to take up too much time but I have to go into some detail in order to explain what I was doing.

We had a story that dealt with a cat which was an object of some fun and which dealt with our running hero whose name was Caine and another character whose name escapes me but was a kind of rollicking body Irishman.

The problem that we found in this outline -- this was the final outline that had been submitted -- the problem was

cases was very extensive.

Q Excuse me. What is teleplay as opposed to --

A -- Teleplay and screen play mean the same thing, a complete script which is a rather total blueprint for everything that is said; everything which is done; the physical action; the scenes; the locals in which it is played, and very frequently the point of view, that is the camera angle, what is important to concentrate on; it is important to be close on a man's face because he is reacting to something or it is important as to why to see the various people doing something within the scene.

That is a script and we call them teleplays only because it is television as opposed to screen plays which are destined for theatrical exhibition. Same thing.

Q How much time does the writer have to get the script of a teleplay back?

A I ask that the writers bring me a first draft teleplay within two weeks or sooner if possible, and I try to estimate from my own knowledge of the way the individual writers worked, how much pressure to put on them.

That is if I felt that a writer could work quickly and still not sacrifice quality, I would push that writer harder than another one who I knew was simply a slower writer as I am.

Q And what occurs when they deliver the scripts to you?

A We went through the same process of revision that I have described for outlines except that it was now included -- all of the aspects of it -- because it was in script form.

The details were obviously the or more in the script than they were in outline because we had all the dialogue and everything else that I have described.

My revisions therefore included not only attitudes and characterization but the expression of those attitudes; expressions of characterization and the details of the action.

In most cases I had found by this time I simply did not have the time to write anything down for the writers and we had developed a pretty good rapport by this time in any event, and these sessions were verbal. That is I would call the writer in and we would sit down. I would detail for him all of the problems that I found as well as whatever solutions I had to offer for those problems in as specific detail as I could, and then we would together attempt to find better solutions or ones which the writer preferred or which I preferred.

Q Now that which you have just described, what period of time from October -- is this the period of time from October to January that we are talking about?

A I believe this would be about the latter part of December. I just lost track. It was such a hassle that I can't really be very accurate about the time involved.

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A I was.

Q As a freelance writer?

A As a freelance writer.

Q You weren't hired as a story editor or executive producer?

A No.

Q Straight writer?

A Correct.

Q And the two months that you are talking about, what functions were you performing for Warner Brothers and Kung Fu?

A I was working as a story editor and at the same time -- I don't honestly recall when I began exactly -- but shortly after my employment I began also to write the episode of Kung Fu that I mentioned earlier.

MR. GOLDMAN: I have no further questions.

MR. LE VINE: I have no questions, your Honor.

JUDGE BARBAN: Mr. Keaton?

MR. KEATON: May we have a stipulation that Mr. John Furia is the same Mr. John Furia who is mentioned --

MR. GOLDMAN: -- Yes, that is mentioned in the complaint.

MR. KEATON: In Section6 of the complaint?

MR. GOLDMAN: Yes.

MR. KEATON: Thank you.

CROSS EXAMINATION

Q (By Mr. Keaton): Mr. Furia, when you worked on Kung Fu as a story editor, how many writers were assigned to that

project?

A All together?

Q All together.

A I would say approximately 18 other than myself.

Q And how many writers did you interview resulting in the selection of those 18?

A Interview?

Q Yes.

A Perhaps 20.

Q Did you talk to any that you did not interview but eliminated from consideration?

A Yes. I thought that is what you meant by interview. I did talk to, I think, two, who I did not employ.

Q And you made that decision I take it?

A In large part entirely, yes.

Q Now these 18 writers I take it worked on the scripts -- they were working on a number of scripts which the network had requested?

A Yes.

Q Which I believe you testified were ultimately 16 in number?

A Yes.

Q You had more than one writer in some instances on a script, did you not?

A Yes, in one instance only.

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JUDGE BARBAN: Mr. Goldman?

MR. GOLDMAN: I have no questions.

JUDGE BARBAN: Mr. Furia, I have one question; I hope this isn't going to start everything all over again.

I would like you in your own words to describe for me as simply and as succinctly as you can, the functions and duties of a story editor as you understand it?

THE WITNESS: May I ask your Honor, do you mean as I performed them where I was overlapping as a producer; as I actually performed them or as it is commonly performed?

I can separate them if you would like.

JUDGE BARBAN: You are touching on the point is the reason I asked the question. I think you have described -- if I have it correct -- I think you have described the function of a story editor who is also acting at least in part or in whole in the capacity of a producer. Am I right about that?

THE WITNESS: Yes, sir.

JUDGE BARBAN: From your own experience?

THE WITNESS: Yes.

JUDGE BARBAN: Now also from your experience I would like to know what are the function and duty of a story editor who is acting only as a story editor or perhaps you are going to tell me that this never happens. I would like to know that too.

THE WITNESS: Much more commonly that would be the

arrangement.

The story editor would be doing -- would be meeting with writers; recommending writers; selecting writers in the way that I have described.

He would be helping writers prepare material in the way that I have described. He would be revising and rewriting material as I have described and continuing to do those functions as I have described throughout the period of production and possibly thereafter.

The distinction that I would draw and the additional things that I was doing was essentially that I had -- that I was doing it alone. That is because there was absent a producer; that I was doing it entirely on my own and not consulting -- not joining with another body; another human being in accomplishing this.

The producer's word in that situation would have been final.

JUDGE BARBAN: So one of the duties or functions of the story editor would be to consult with the producer with respect to these other functions that you have just stated?

THE WITNESS: Yes, and to work with the producer in the kind of rewrite functions that I have been describing rather than do it exclusively as I did.

JUDGE BARBAN: Any questions on this one point?

Mr. LeVine?

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I didn't have those experiences partly because I was foolishly stubborn and I don't know, I just for some reason or another I personally didn't.

MR. GOLDMAN: I have no further questions.

MR. LE VINE: I have no questions, your Honor.

JUDGE BARBAN: Mr. Keaton?

CROSS EXAMINATION

Q (By Mr. Keaton): Mr. John Ford, the director that you mentioned, a writer?

A No. Excuse me. You mean in the formal sense of a writer -- I would say no. I would say he writes with film.

Q But he does I take it do from what you know about him, the same kind of thing in changing the picture as you are shooting that you do?

A I don't know exactly the same. I am not sure that he actually writes anything down. He may take a scene that is written and work on it with the actors and just drop certain lines; improvise certain lines rather than actually writing something down. I am not certain.

Q But you know it can be an oral change instead of a written change?

A Yes. Very often I have oral changes after conferences that I do not have time to write them sometimes, but the actors don't really make up the lines themselves; they don't make up the situation themselves. Sometimes they do very well at it

145 by the way.

Q An actor may be changing a line?

A Not without my permission.

Q No, but with your permission?

A Yes, of course Sometimes it is a better line than I have written. As a matter of fact he is not the only one. Sometimes a cameraman, a grip or a prop can also do that.

Q I don't remember, were you the director in Caine Mutiny?

A No, I was not.

Q It was my understanding that in Caine Mutiny Marlon Brando rewrote a good part of the last few scenes?

A I wouldn't doubt it. Marlon is a very astute professional player but Marlon Brando was not in Caine Mutiny.

Q Mutiny on the Bounty. Excuse me.

A Yes. Well, Mutiny on the Bounty he did a lot of improvising and rewriting I would say. Yes. He usually does.

Q To your knowledge Marlon Brando is not a writer, is he?

A He is not what?

Q A writer in the professional sense?

A No, but when he directed his only film he did a lot of rewriting while he was shooting.

Now I don't know what you call writing but Marlon Brando made many changes while he was shooting the picture and I have forgotten -- it was a western -- I have forgotten the title of it, but it was changed and changed as he went along -- the

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same way he does when he is acting. He is quite an unusual man; quite an unusual actor. An extremely talented man with exceptionally good taste most of the time. He wastes a lot of the company's money perhaps but he is an exception; he is an exceptional man.

MR. KEATON: I have no further questions.

JUDGE BARBAN: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE BARBAN: Mr. Goldman?

MR. GOLDMAN: No questions.

JUDGE BARBAN: You are excused. Thank you very much.

(Witness excused.)

JUDGE BARBAN: In accordance with our discussions previously and as we further discussed off the record, we will be in recess at this time until 9:30 Wednesday morning in this room.

(Whereupon, at 4:10 p.m. the hearing in the above entitled matter was recessed until 9:30 a.m., Wednesday, June 13, 1973.)

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MR. HACKLER: I am informed that he is a member but what class of membership he has I don't know.

JUDGE BARBAN: Does that satisfy your point?

MR. MILLER: Yes, it does, your Honor.

JUDGE BARBAN: Is there an objection to the receipt of Respondent's 11 under these circumstances?

MR. MILLER: There is no objection, your Honor.

MR. FISHER: No objection, your Honor, and again I would like -- I don't know if part of that stipulation was on the record that this was the result -- this article was the result of a Guild press release, whether it was written or oral, that the Guild was responsible for the article.

JUDGE BARBAN: I don't think you have a specific stipulation or admission that the Guild was responsible for the article. That might be an inference or a finding I might make.

MR. HACKLER: I am informed that after the action which is shown in evidence here, of rescinding Rule 30, and after the action with respect to the role of dishonor which has been put in as an exhibit here, that someone in the Guild took steps which are shown in the record, not only rescind the -- not only send the rescision of rule 30 to the members in the form in exhibits here -- but also to cause an article to be written on the subject which speaks for itself and to communicate with the reporter for this publication on the

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basis for which he wrote this article.

MR. KEATON: Your Honor, if Mr. Hackler wants to make this representation by way of stipulation we will so stipulate.

JUDGE BARBAN: All right then, that is accepted. Even if it were not a stipulation it would probably be for Mr. Miller's purposes an admission, so it serves the same purpose.

All right, gentlemen. The document has been received and I think that you have a sufficient explanation for it.

(The document above referred to, heretofore marked Respondent's Exhibit No. 11 for identification, was received in evidence.)

MR. HACKLER: I take it it is understood and the record will disclose it, we objected to the receipt of this publicity material and it was received over our objection and we want the record complete as to our standpoint, publicity attendant upon these actions that are criticized here.

I solicited from Mr. Fisher a stipulation with respect to G.C. Exhibit 3.

MR. FISHER: Yes. I refer to the final page of that exhibit under the heading National Broadcasting Company and would amend the exhibit as follows: Strike out --

JUDGE BARBAN: -- Just a moment, gentlemen.

We are now talking about General Counsel's Exhibit 3.

Now you were proposing an amendment to that exhibit?

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for the Network and I have had some problem because there were two men of the same name and the Guild's girls couldn't determine whether it was one or the other and we subsequently done some investigating and we have jointly agreed that Lewis Ray Hunter is the person referred to and our records do disclose as of the date we supplied this information that he was a member of the Guild.

JUDGE BARBAN: Anything further, Mr. Hackler?

MR. HACKLER: The Respondent rests.

JUDGE BARBAN: Does the General Counsel have any rebuttal?

MR. LE VINE: No, we don't, your Honor.

JUDGE BARBAN: The Association?

MR. KEATON: We have one.

JUDGE BARBAN: Lets call him at this time unless you want a recess.

MR. KEATON: Could we have about five minutes?

JUDGE BARBAN: All right. We will be in recess until a quarter to 11:00.

(Whereupon a short recess was taken.)

JUDGE BARBAN: On the record.

Do you want to proceed?

MR. MILLER: Yes. The Association calls Mr. Sheldon Mittleman to the stand.

Whereupon,

SHELDON MITTLEMAN

was called as a witness by and on behalf of the Association and, after having been first duly reminded of his previous oath, was examined and testified as follows:

MR. MILLER: Will the Guild stipulate that Mr. Mittleman has previously testified and has identified himself, his background, et cetera?

MR. HACKLER: Yes.

DIRECT EXAMINATION

Q (By Mr. Miller): Mr. Mittleman, I would like to show you a copy of Respondent's Exhibit number 6 -- let the record show that I am handing Mr. Mittleman a copy of Respondent's Exhibit number 6 entitled It Takes A Thief, The Galloping Skin Game.

Will you take a minute to review that please?

A. I have briefly reviewed it. I have not read it in detail.

Q. Thank you. In connection with this script did I request recently within the last few days that you review your files in connection with this script?

A. Yes, you did.

Q. Did I request that you reveal -- that you review not only the legal documents but the various script revisions connected with this script?

A. Yes, you did.

Q. Have you so done?

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Q Are you a member of any other committee?

A I am also a member of the legal committee of the Association of Motion Picture and Television Producers.

Q In your function as a member of the negotiating committee have you been involved in the current negotiations with the Writers Guild of America?

A I have.

Q And since when have you been involved?

A Since approximately mid-February 1973 when the negotiations commenced upon notice from the Writers Guild of America that they had elected to terminate the 1970 minimum basic agreement.

Q Now have you also participated in discussions concerning overall policy in the Association in connection with both the negotiations and the strike?

A Yes, I have.

Q Have you been involved in Association policy discussions concerning employment of hyphenates during the strike?

A Yes, I have. In fact I have been present at every single meeting of the negotiating committee, either the internal meeting of the committee itself or the meetings between the full negotiating committee and the negotiating committee of the Writers Guild of America.

Q Now in connection with the employment of hyphenates during the strike, was there any Association policy determined as to their employment?

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A Yes.

Q And what was that policy?

MR. HACKLER: Objection. There is no foundation laid for that. The fact that he is presently in negotiation or participating is entirely too vague.

MR. MILLER: I believe I also asked him whether he was engaged in those meetings -- the internal meetings -- which determined Association policy and the answer was yes, he was.

JUDGE BARLAN: The objection is overruled.

Q (By Mr. Miller): What was that policy?

A The policy was discussed and finally agreed upon among the member companies of the Association, that in the event of a strike the hyphenate employees, that is the producers or associate producers or other types of executives who were members of the Writers Guild, would be instructed and directed to continue to report under their employment agreements but that they would be advised that they would not be required or expected to do any writing services under the jurisdiction of the Writers Guild agreement.

Q Now was that policy decided upon in a meeting attended by the various representatives of the member companies?

A Yes, it was.

Q And was that policy disseminated to all members of the Association company -- excuse me -- to all member companies?

A Yes, in a number of steps. The policy was then given

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to the legal committee of the Association of Motion Picture and Television Producers, and the legal committee drafted and approved a sample, in effect, statement of policy which was sent to all the members to be eventually sent to the writers, the writer hyphenate.

The communication was made to all member companies as to this policy.

MR. HACKLER: I move that that last answer and this whole line of questioning be stricken because it now appears that it is not the best evidence; there was a written memorandum approved by the lawyers and sent to reflect whatever policy at that time.

JUDGE BARBAN: Mr. Miller?

MR. MILLER: The document itself --

MR. HACKLER: -- I don't know whether I moved that the answer be stricken or not but I do.

JUDGE BARBAN: You did so move.

MR. MILLER: Your Honor, the document itself is only in support of the fact that the policy was actually adopted and disseminated to various member companies of the Association.

THE WITNESS: Your Honor, may I correct one statement which I think I may have misstated which Mr. Hackler has reminded me of.

I do not believe that there was a statement of policy sent to the members, it was a form -- a letter was prepared

found material. I won't pass on that but I assume that this evidence goes to that point, whether or not they prove the point is another matter.

Go ahead, Mr. Miller.

Q (By Mr. Miller): Mr. Mittleman, the policy to which you referred to, had that policy been implemented at Universal City studio?

MR. HACKLER: Object to that. Conclusionary. Extreme. No foundation laid.

JUDGE BARBAN: All right. I am going to sustain the objection to the form of the question. Now if you want to ask the witness what if anything was done about this, I will consider that.

Q (By Mr. Miller): Mr. Mittleman -- I will withdraw the question -- in connection with Universal City Studios what if anything -- what if any action did Universal City Studios take in connection with this policy?

A Universal sent notices and advised in many cases orally, all the hyphenates, all the executives who they knew or believed to be also members of the Writers Guild.

MR. HACKLER: May I ask a question on voir dire with respect to that answer?

JUDGE BARBAN: I don't believe he has finished his statement.

THE WITNESS: No, I have not.

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JUDGE BARBAN: All right.

THE WITNESS: They sent one or the other or both forms of communication to all executives whom they believed to be members of the Writers Guild. The substance of which was that in the event Writers Guild called a strike, each of these people would be expected to honor his employment agreement and to report for services in a supervisory capacity and the particular capacity was specified in that type of notice as a producer or as a director or as an executive or whatever.

MR. HACKLER: That is preliminary to a possible motion to strike if I may inquire on voir dire of this witness as to his knowledge of these matters.

JUDGE BARBAN: Rather than do that, Mr. Miller, will you develop with the witness right now the basis for his knowledge of that?

Q (By Mr. Miller): You just testified as to communications, notices, did you personally -- do you personally know or did you participate in any of these activities?

A Yes, I did.

Q Would you please describe in your own words your role in these activities?

A I was involved along with one or more attorneys of our law department in the drafting of such notice. I was involved in the procedure which attempted to determine which of the employees of Universal Television were members of the Writers

Whereupon,

ORISON S. MARDEN

was called as a witness by and on behalf of the Network and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Fisher) Would you state your name and address for the record?

A My name is Orison S. Marden. I reside at 1792 Warwick Road, San Marino, California.

Q By whom are you employed, Mr. Marden?

A Columbia Broadcasting System.

Q And in what capacity?

A I am director of labor relations, West Coast.

Q And would you describe for us your role if any in the current negotiations between the networks and the Writers Guild of America?

A I am part of the bargaining committee for the networks. Also meeting with the Association.

Q You are attending the Association meetings you say?

A Yes.

Q Have there been any meetings among the networks to formulate negotiations, strike policy, to be followed during the negotiations with the Writers Guild?

A Yes.

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Q Have you attended those meetings?

A Yes.

Q In the course of those meetings have there been formulated any policy with respect to the networks position on whether or not their executives, vice presidents, producers, executive producers and story editors and other executives should be required to work during the strike if those persons are members of the Writers Guild?

A Yes.

Q Would you describe or tell us when and the content of that policy? When it was formulated and what it involves?

A This would have been toward the end of February of this year and the policy was such that the persons whom you have described were members of the Writers Guild would not be required to do any covered writing services.

Q What do you mean by covered writing services?

A In the film agreement that is known in the trade as A through H is not covered.

Q Is it your testimony it would be considered covered services for purposes of that policy?

A I believe that is true. I am not an absolute expert on the film agreement but in general that is true.

Q My question has to do with what the policy was and not what the contract is?

A The policy was that they would not be required to write.

Q What production activities is CBS engaging in during the strike?

A At the moment a one hour television program called Gunsmoke.

Q That is the only activity?

A Yes.

Q Would you tell us how many scripts if any the Gunsmoke program had prepared prior to the commencement of the strike?

A 17.

Q And how many scripts are scheduled to be shot during this season?

A I believe it is 24.

Q To your knowledge have any hyphenates employed by CBS varied from the policy set forth -- you earlier described a policy with respect to writing services during the strike?

MR. HACKLER: Objection. There is no foundation laid for this witness to be in a position by virtue of being in the labor relations department in knowing what writing services if any were being supplied by who.

JUDGE BARBAN: The question goes to whether to his knowledge.

MR. HACKLER: Then I withdraw the objection.

THE WITNESS: To my knowledge, no.

Q (By Mr. Fisher): And upon what do you base that answer; how do you get your knowledge?

219 A Through constant contact -- not always daily -- but quite constant contact with the executives of the program department.

Q Who would that be?

A Harry Lafferty; Paul King; Frank Barton; Bill Berry, who do keep me informed as to the production activities as part of my background in dealing with negotiations and the strike.

Q To your knowledge is there any current -- I shouldn't say current -- has there been any production of television programs taking place at National Broadcasting Company since the commencement of the Writers Guild Strike?

MR. HACKLER: Objection. There has been no foundation laid as to what the other networks do. It would be his opinion.

JUDGE BARBAN: Overruled. You may answer.

THE WITNESS: That's right.

Q (By Mr. Fisher): And upon what do you base that knowledge?

A My knowledge of the industry and also in conversation with NBC executives. They have not been in film production since the Bonanza series was cancelled..

Q They had no program scheduled for this year, is that your testimony?

A That is correct.

MR. FISHER: I have no further questions.

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MR. LE VINE: No further questions.

JUDGE BARBAN: Mr. Keaton?

MR. KEATON: No further questions.

JUDGE BARBAN: Mr. Fisher?

REDIRECT EXAMINATION

Q (By Mr. Fisher): Mr. Marden, you stated I believe, that the scripts were to your knowledge, in final condition and that certainly no writing services were done by any of the hyphenates on the program?

A Yes.

MR. HACKLER: I don't think that is a fair statement, he said to his knowledge none was done.

JUDGE BARBAN: Lets assume the Witness' testimony is that to his knowledge that was done.

Q (By Mr. Fisher): Upon what do you base that knowledge? Anything more specific?

A I would say two things. Again in my continuing contact with the program executives and also the statement by Mr. Mantley that appeared in print that while they were on location shooting in Arizona, he ran way over budget on that particular episode because he felt that he shot the script as it actually was and therefore shot more material than he needed because he was not going to do any writing or rewriting.

MR. FISHER: That is all I have.

JUDGE BARBAN: Mr. Hackler?